

United States District Court
For the Southern District of California

RYAN MOORE,

Plaintiff,

v.

UNITED STATES OF AMERICA and
DOES 1 THROUGH 25, INCLUSIVE,

Defendants.

No. 15-CV-75-LAB

February 28, 2017

San Diego, California

Volume 1
Transcript of Trial
BEFORE THE HONORABLE LARRY ALAN BURNS
United States District Judge

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Case: Moore v. USA
Date: February 28, 2017

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2 * * *

3 THE CLERK: Calling number 1 on the calendar,
4 15-CV-75, Moore versus United States of America. If counsel
09:09 5 could please state your appearances for the record.

6 MR. CHAMBERS: Good morning, Your Honor. Rob Chambers
7 and Ben Wohlfeil on behalf of Mr. Moore.

8 THE COURT: All right. Good morning.

9 MR. LASKE: Good morning, Your Honor. Assistant U.S.
09:09 10 Attorney Tim Laske and my co-counsel, Assistant U.S. Attorney
11 Garrett Coyle on behalf of the government.

12 THE COURT: Good morning. All right. We are
13 scheduled for trial in the matter of Ryan Moore versus the
14 United States. Two motions in limine were pending. The
09:09 15 Court's prepared to rule on those.

16 Also, I was informed by the law clerk that there may be an
17 additional issue about the elements of the premises liability
18 claim, but let me deal with first things first.

19 Do plaintiffs have anything else on the government's
09:10 20 argument that training evidence should be excluded under the
21 discretionary function rule?

22 MR. CHAMBERS: I think we actually argued this a month
23 or two ago on a conference call, Your Honor. I don't know if
24 the Court took it under submission or not. Basically whether
09:10 25 or not it comes in for evidence of liability against the

1 government I think -- I agree with them, I don't think that's
2 permissible.

3 THE COURT: what relevance would it have then? As I
4 understand the proffer, he's going to talk about training, and
09:10 5 if that's not a basis for liability, why waste time having a
6 guy testify about something not relevant?

7 MR. CHAMBERS: Because one of the issues in the case
8 is what sort of training and expertise Mr. Moore had in filling
9 tires.

09:10 10 THE COURT: He can testify to that, though.

11 MR. CHAMBERS: And the training he's received, right,
12 that would be the purpose for presenting evidence to that.

13 THE COURT: well, as I understand the gist of the in
14 limine motion, it's not directed at Mr. Moore talking about his
09:11 15 background and training. Instead -- forgive me. I've
16 forgotten the expert witness' name.

17 MR. LASKE: It's Mr. Jennings, and actually --

18 THE COURT: It's directed at Mr. Jennings in
19 preventing him. As I understand it, one of his opinions was
09:11 20 that people should have been trained on how to use this and
21 because they weren't, that supports a negligence theory. And I
22 think that runs right up against the discretionary function
23 exception.

24 MR. CHAMBERS: And Mr. Jennings won't be testifying at
09:11 25 trial, Your Honor.

1 THE COURT: Okay. Does that moot the issue as far as
2 you're concerned?

3 MR. LASKE: I believe so, Your Honor. I think the
4 only other witness that may mention training, but I'd have to
09:11 5 look back, is we're submitting a transcript relating to Ronald
6 Zermeno because he lives in Arkansas, and he's a former border
7 patrol employee.

8 THE COURT: I agree with the government that
9 discretionary function exception applies under these
09:12 10 circumstances. I think how they allocate training dollars and
11 resources is a matter within the government's discretion for
12 which they can't be liable.

13 That said, I'm not going to preclude the plaintiff from
14 talking about his background and putting him in the setting
09:12 15 that he was in at the time that the accident occurred.

16 So I'll -- you know, whatever he says about his training,
17 of course, will be considered for proper purpose, not for an
18 improper purpose forbidden by the discretionary function
19 exception.

09:12 20 The second motion in limine had to do with spoliation
21 inference, and I'm inclined to reserve on that. It doesn't
22 matter here as it would in a jury trial where you might need to
23 put on some additional evidence to warrant an instruction. I
24 am wondering what the theory is of the plaintiffs. I
09:13 25 understand the plaintiffs believe that this equipment -- it's a

1 gauge of some type. Does the gauge, as you understand it -- I
2 know you never got it, but did the gauge have numbers on it? I
3 mean, was it -- for example, I have a small inflation device at
4 my house that I use on my tires. It does not have a gauge on
09:13 5 it, but I have a little magnetic gauge that I put a little air
6 in it, and then I test it. Did this gauge -- or did this piece
7 of equipment have one of those gauges that showed the numbers
8 and the pounds per square inch?

9 MR. CHAMBERS: It did, Your Honor. The whole -- the
09:13 10 inflater itself where you'd actually pull the trigger to push
11 the air out was built in with a gauge on it, so it was one
12 unit.

13 THE COURT: Was it a numerical gauge or the
14 old-fashioned ones used to slide out? You'd get to a certain
09:13 15 point of pressure and it would show on a slide. What kind of
16 gauge was it?

17 MR. CHAMBERS: It wasn't the ones that pop out. It's
18 what they call a bubble gauge, so there would have been lines
19 designating certain pressures as you reach those.

09:14 20 THE COURT: It was not one of those --

21 MR. CHAMBERS: It was one of those, but it doesn't pop
22 out. It would just slide -- there's a little glass bubble that
23 you look into, and you can see the lines as they start to go
24 out.

09:14 25 THE COURT: All right. And what's your theory with

1 respect to that; that it wasn't functioning, it wasn't showing
2 the proper PSI?

3 MR. CHAMBERS: Yes.

4 THE COURT: It wasn't functioning at all or it was
09:14 5 partially functioning or malfunctioning or what?

6 MR. CHAMBERS: It could have been any combination of
7 those, whether it was nonfunctional or reading improper or
8 incorrect pressures inside the tire.

9 THE COURT: well, okay.

09:14 10 MR. CHAMBERS: We do have some evidence to put on in
11 that regard.

12 THE COURT: All right. I'm prepared to reserve on
13 that. I mean, it just strikes me it might be a two-edged
14 sword. I'm sure you have thought about this, but, you know,
09:14 15 somebody using a gauge that's obviously not working and
16 continuing to pump air in when the user of the gauge is aware
17 that it's not working I suppose conceivably -- this is -- I
18 mean, I was thinking about this after I read the motion in
19 limine, but conceivably it could be a basis for ascribing
09:15 20 comparative fault, right? I don't know how much air is going
21 in, but I'm going to keep pumping, keep pumping, keep pumping?
22 So I'm not exactly sure what inference I'm to draw. I suppose
23 the most inference I could draw is that the investigators
24 appreciated that there was some problem with this gauge that
09:15 25 might lead to liability and so they deep sixed it, right?

1 MR. CHAMBERS: Yes.

2 THE COURT: Well, we'll see where the evidence goes on
3 that. I'm open to it. I understand that this is a -- this is
4 something that I think is material, should have been preserved,
09:15 5 but where we go with what inferences to be drawn I think will
6 depend on exactly what the evidence is, so I'll reserve on
7 that.

8 There was a final issue regarding premises liability. My
9 law clerk told me that there might have been an issue on the
09:15 10 elements of that claim; that the government's taken the
11 position that in all respects it's just like a general
12 negligence claim? Michael, did I get that right?

13 LAW CLERK: I thought so, Judge. In the pretrial
14 order, page 2, it notes that defendants do not agree to this
09:16 15 third element of premises liability, but maybe you guys have
16 reached a different position.

17 THE COURT: If it's not on your radar screens now, we
18 can wait until the break, and you can take a look at it, and we
19 can revisit it. It doesn't sound like it's anything essential
09:16 20 for me to rule on.

21 MR. CHAMBERS: That would be great, and I can chat
22 with Mr. Laske.

23 MR. LASKE: We'll take a look, Your Honor. I don't
24 think it was one of the issues on the top of our list.

09:16 25 THE COURT: Okay. Does either side wish to make an

1 opening statement?

2 MR. CHAMBERS: Yes.

3 MR. LASKE: Yes.

09:16 4 THE COURT: Mr. Chambers, are you going to speak for
5 plaintiff?

6 MR. CHAMBERS: Mr. Wohlfeil will.

7 THE COURT: Remind me again. This is a ten-hour case
8 per side?

9 LAW CLERK: 12 hours.

09:16 10 THE COURT: Okay. You're on the clock, Mr. Wohlfeil.

11 MR. WOHLFEIL: Thank you, Your Honor.

12 A property owner must not expose people to needless danger
13 or preventible harm. It's a basic but important principle that
14 applies to this case. It applies to all property owners,
09:17 15 including the border patrol. I'd like to introduce my client,
16 Ryan Moore, who's sitting with us at plaintiff's table.

17 THE COURT: Agent Moore, good morning.

18 THE PLAINTIFF: Good morning, Your Honor.

19 MR. WOHLFEIL: So, Your Honor, what happened in this
09:17 20 case, on the left of your screen you see Ryan Moore with --
21 today is a ten-plus year agent of the border patrol, obviously
22 smiling, chin up, looking proud, obviously on duty with his
23 badge on, his belt, but in the blink of an eye becomes the
24 mangled medical patient that you see on the right of the
09:17 25 screen.

1 How does that happen? Your Honor, even though Ryan himself
2 has no memory of the incident, and even though there are no
3 witnesses to this incident, we don't anticipate a lot of
4 dispute that what happened was on June 24, 2013, Ryan was
09:18 5 inflating his wheelbarrow tire at the Chula Vista border patrol
6 station when it exploded in his face and caused the injuries
7 that you see on the right of your screen.

8 Your Honor, this is the scene the night of the tire
9 explosion with Mr. Moore. What you see is a photo taken later
09:18 10 that night by the CIIT team, the Critical Incident
11 Investigative Team, which is a team of the border patrol of
12 investigators who investigate incidents just like these.

13 In purple there you see the metal rim that was contained
14 within Ryan Moore's wheelbarrow tire, in green the tire and the
09:18 15 inner tube, in blue, Your Honor, the piece of very important
16 evidence that we were just talking about a moment ago, the hose
17 and the inflater that Mr. Moore used to inflate his wheelbarrow
18 tire. In yellow you see the hose reel that holds the hose and
19 inflater. To the right there is Ryan's SUV, and then in the
09:19 20 back behind the barbed-wire fence is a shed that contains two
21 industrial air compressors that powered that inflater, in
22 addition to other tools, pneumatic tools, at the border patrol
23 station.

24 Your Honor, to understand where everything happened in
09:19 25 this case, you need to know a little bit about the Chula Vista

1 border patrol station. As you can see, it's surrounded
2 in -- with a green line by a perimeter -- secured perimeter
3 fence. In the blue near the top of the page is the scene that
4 I just showed you in the previous photo that basically is the
09:19 5 barbed-wire fence surrounding the shed that contains the two
6 air compressors. In yellow is the hose reel that contains the
7 inflater that Ryan used to inflate his wheelbarrow tire. Just
8 across the parking lot there, in the orange rectangle, is the
9 garage. This was an industrial garage with nine bays that
09:20 10 basically worked to take care of all the vehicles at the border
11 patrol facility.

12 And connected to the garage is the VCO, Vehicle Control
13 Officer, office.

14 Your Honor, the take-away point from this is there's
09:20 15 no doubt that the border patrol owned and controlled this
16 facility.

17 Returning to the scene, Your Honor, I wanted to point out
18 that this is -- in blue you see the locked barbed-wire fence.
19 And, again, Your Honor, this is an interior fence. People who
09:20 20 have already made it past the secured perimeter are themselves
21 allowed to be inside, but yet are still subject to
22 the -- obviously, the barbed-wire fence. Again, you see the
23 inflater and the hose reel in yellow and the two industrial air
24 compressors stored in the shed behind the barbed-wire fence.

09:21 25 This is a subsequent photo that shows the same fence

1 obviously with an gate open. Note, Your Honor, the padlock to
2 the left kept on the gate, and in the rear the shed, which is
3 now open, with the two industrial air compressors.

4 Your Honor, this is a close-up of the air compressor shop,
09:21 5 or shed, showing the two industrial air compressors. Again,
6 note the third layer of security in the form of the padlocked
7 shed.

8 Your Honor, the basic take-away point from this is that
9 Ryan did not know, and he had no way of knowing, the power, the
09:22 10 air pressure, that were coming out of these two air compressors
11 the night that he used it.

12 I'm going to talk a little bit about the air compressors
13 themselves, Your Honor. There were obviously two of them, and
14 they were arranged in what's called a master/slave
09:22 15 relationship. At the time of the incident, the compressor on
16 your right, the Ingersoll-Rand brand compressor, was in the
17 master position while the one on the left, the Stewart Warner,
18 was in the slave position. Essentially that meant that the
19 settings on the Ingersoll-Rand compressor controlled when the
09:22 20 air kicked on or off. And a couple of terms that you need to
21 know is the cut in and cut out of these compressors.

22 You'll note item number 3 is 175 PSI cut out, 175 pounds
23 per square inch cut out. What that meant was that the large
24 motors that you see on top of the tanks would stop pumping air
09:22 25 into those 80-gallon tanks once the internal settings of the

1 compressor had reached 175.

2 Likewise or similarly when the air pressure in the tank
3 dropped below 145, the cut-in pressure, those engines would
4 kick on and begin pumping air back into that tank, that
09:23 5 80-gallon tank. Your Honor, these are 200 PSI capacity, so
6 they're set very close to the actual capacity of these
7 machines.

8 Your Honor, in very basic terms, what you need to know
9 is that the pressure, the air pressure, coming out of these
09:23 10 tanks and going to pneumatic tools was constantly between 145
11 and 175 PSI.

12 One of the uses or one of the air-supplied parts of the
13 border patrol station was that garage that's just across the
14 parking lot that I mentioned earlier. Your Honor, as I said,
09:23 15 this is a nine-bay industrial garage that had a variety of
16 industrial uses. I've got several of them here. Oil machines,
17 air station, vehicle lifts, which, Your Honor, were capable of
18 getting a Chevy Tahoe off the ground, grease guns, tire
19 changers. These are all running throughout the day by several
09:24 20 mechanics who worked in the garage at the time. Basically this
21 garage, as I said earlier, was in charge of maintaining the
22 entire fleet of border patrol vehicles, and the power that was
23 coming out of these compressors was way more than necessary
24 even to do each of these uses.

09:24 25 Your Honor, the piece of evidence that we were just

1 talking about, the important piece of evidence in this case is
2 the inflater. It's a fairly intuitive device. Circled in red
3 you see the trigger that you press or squeeze to get air to
4 come out of the inflater. On the end circled in blue is what's
09:24 5 called a chuck. In this case it's a nonlocking chuck. That
6 means that the chuck itself cannot be locked onto the nozzle
7 from the tire. And you see in green, the gauge, which would
8 indicate the PSI of a tire actually connected to the chuck.

9 Your Honor, what's important to know is a couple of things.
09:25 10 First by squeezing the trigger in one hand and holding the
11 nonlocking chuck to a tire nozzle, both hands are occupied. In
12 addition, Your Honor, it's important to know that this inflater
13 was used exclusively for filling up tires at the border patrol
14 station. It wasn't connected, for example, to a vehicle lift.

09:25 15 So, Your Honor, what kind of tires did the border patrol
16 use this inflater to inflate? A variety, large and small,
17 including SUV tires, ATV tires, and van tires.

18 Your Honor, for the larger tires, the PSI, the maximum PSI,
19 was around 80 PSI. For the smaller tires, such as an ATV tire,
09:26 20 it was 7.

21 THE COURT: I'm sorry?

22 MR. WOHLFEIL: 7 PSI. Your Honor, another point where
23 there's not much or any dispute is the experts agree that the
24 maximum PSI of the wheelbarrow tire, which is 30 PSI, using
09:26 25 this inflater, would have been reached in a second.

1 THE COURT: One second?

2 MR. WOHLFEIL: One second. That's squeeze, fill, that
3 quickly.

4 Your Honor, the defense own expert testing shows that in
09:26 5 approximately 26 seconds, a similar tire exploded.

6 Given the uses with this inflater and the extreme power,
7 what restrictions, if any, did the border patrol put on this
8 tire? The answer is none.

9 As you can see, the parties have stipulated the border
09:27 10 patrol did not have any policy or regulation limiting federal
11 employees from using the tire inflater at issue, and thus Ryan
12 Moore was not violating any workplace policy or regulation
13 regarding use of the air compressor on June 24, 2013.

14 THE COURT: Go ahead.

09:27 15 MR. WOHLFEIL: Given the power that was coming out of
16 the compressors, the variety of tires that were used to inflate
17 with this inflater, and the lack of any restrictions, what
18 warnings did the border patrol put on this inflater? And the
19 answer, again, is none.

09:27 20 The parties have stipulated on June 24, 2013, there were no
21 posted signs warning about any potential risk of injury from
22 using the air compressors.

23 Your Honor, how could this have all have been avoided? I
24 need to tell you about regulators. Regulators are a very
09:28 25 simple, fairly cheap device that can be installed essentially

1 along any air line. You can see the two knobs on exemplar
2 regulators. Basically they decrease the air pressure
3 downstream once the air pressure hits the regulator.

09:28 4 Again, another point of agreement is the experts in this
5 case agree that had a regulator been installed on this inflater
6 and reduced to 80 PSI, for example, it would have been
7 sufficient to inflate any of the tires that the border patrol
8 inflated with this inflater, and yet this incident would not
9 have happened.

09:29 10 How do we know the border patrol appreciates the value of
11 regulators? well, Your Honor, they installed one, and they
12 installed one just a few feet away from this line.

13 In the top left corner you recognize the shop to the right
14 of that photo was where the two air compressors were stored.
09:29 15 Attached to that shop is an additional shop where there were
16 additional tools, and there was at least one regulator inside
17 that shop. Inexplicably, 20 feet away, the inflater that Ryan
18 Moore used did not have a regulator.

19 You've indicated that you read our brief on spoliation of
09:30 20 evidence, so I won't belabor this point, but we anticipate the
21 argument from the defense that, as you were noting, Ryan should
22 have been looking at the gauge.

23 well, Your Honor we'd love to look at the gauge now. We've
24 been wanting to look at the gauge for months, but we can't.
09:30 25 The border patrol has admitted in discovery that they disposed

1 of it.

2 Your Honor, as we noted in our brief, the law only requires
3 willful destruction, and here we have this admission from the
4 border patrol that they destroyed it.

09:30 5 THE COURT: It's a permissible inference, though.
6 It's not a mandatory inference.

7 MR. WOHLFEIL: I believe that's correct.

8 Your Honor, in addition to the simple disposal of the
9 critical evidence in this case, there were multiple
09:30 10 investigations going on, as we noted in our brief, and
11 essentially several different versions of the border patrol
12 wanted to know precisely what happened with Ryan and where
13 this -- where this key piece of evidence ended up.

14 We think it's more than enough to support the adverse
09:30 15 inference at the end of trial, and it's supported by our
16 expert, Dr. Rondinone, our expert, in engineering.

17 THE COURT: On the issue of spoliation, I mean I've
18 dealt with it in the past. I said it's a permissive inference.
19 I think it's kind of a sliding scale. If I find this was an
09:31 20 intentional bad faith effort to hide evidence that might have
21 been unfavorable, then the strength of the inference increases,
22 that they did this in order to hurt your case and help theirs,
23 right?

24 MR. WOHLFEIL: Yes.

09:31 25 THE COURT: But the more -- the closer it is to

1 negligence or just overlooking something, the more the scale
2 slides back down, I can still draw an inference, I can still
3 say this was very sloppy, but, you know, the skullduggery
4 element is missing, and the logic of the inference decreases a
09:31 5 little bit, I think, if it's negligent as opposed to
6 intentional. Do you agree with that?

7 MR. WOHLFEIL: I think it's a fair summary of the law
8 yes, Your Honor.

9 Your Honor, next I'm going to touch on Ryan's injuries.
09:31 10 Obviously, the photo largely speaks for itself. I'll point
11 out, though, that mostly there's not a dispute that the tire
12 explosion in this case injured Ryan's face terribly. There's
13 largely no dispute regarding even the severity of his injuries.
14 There's some dispute regarding the future care and, of course,
09:32 15 the cost of that future care for Ryan, but we'll let the
16 experts address that issue.

17 Finally, Your Honor, I'll address damages. This is a photo
18 of Ryan after the incident obviously showing his scar.

19 Your Honor, before this incident, Ryan was a man who just
09:32 20 enjoyed life. He enjoyed going out, he enjoyed spending time
21 with family and friends, and now he just doesn't. He's
22 exhausted, he trusts nobody, he's embarrassed, he isolates
23 himself. It may not be the perfect way to handle it, but
24 that's what he does because he's hurt, Your Honor, and yes,
09:32 25 we'll hear the argument that he's back at work, and yes, he is,

1 he's been working for some time now, but he does it to cope.
2 He does it because he needs it.

3 Your Honor, he had a nickname growing up. Still does.
4 It was Chuckles, for his big smile, big laugh, and it's
09:33 5 something that people closest to him, including his brother,
6 his mother, who are going to testify -- they miss about him.
7 They don't see Chuckles anymore. They see somebody completely
8 different.

9 Your Honor, under the circumstances of this case, it
09:33 10 merits a multimillion dollar award, and that's what we'll be
11 asking for.

12 THE COURT: All right. Thank you, Mr. Wohlfeil.

13 Does the government wish to make an opening statement at
14 this time?

09:33 15 MR. LASKE: Yes, Your Honor.

16 THE COURT: All right.

17 MR. LASKE: Good morning, Your Honor, and counsel.

18 THE COURT: Good morning.

19 MR. LASKE: As I've stated earlier, my name is
09:33 20 Assistant U.S. Attorney Tim Laske, and I'm here with my
21 co-counsel, Garrett Coyle. Also at counsel's table is our
22 client representative. It's the patrol agent in charge, Daniel
23 Parks. Essentially this is his station, so whatever happens in
24 the next few days, it's discussing the place where he is the
09:34 25 ultimate authority.

1 Now, this is a simple case, and it's simple because you
2 will not hear any evidence that this border patrol did anything
3 wrong. You will not hear any evidence of plaintiff suffering
4 lifelong injuries. You just saw the photo. He does have a
09:34 5 scar, but it's nowhere near what the scar looked like after the
6 initial injuries.

7 Because also you'll hear that in the last 20 months, he has
8 been on a cross border task force, and since the fall of last
9 year, he's been on an FBI task force, and on those task forces,
09:34 10 he drives, conducts surveillance, he carries a weapon, he goes
11 on raids where they're there to capture suspected criminals or
12 do searches of target locations for money, drugs, or whatever
13 evidence they're looking for.

14 The evidence will show that the border patrol regularly
09:35 15 maintained the tire inflater, the air hose, and the air
16 compressors.

17 You will hear testimony that no one else had ever been
18 injured using the tire inflater and air hose at the location of
19 this accident.

09:35 20 You'll also hear evidence that, to the extent the plaintiff
21 remembers, he had also used that same station. Maybe not the
22 same tire inflater, but the same filling station, and he had
23 never been injured before when he used it for vehicle tires.

24 Most importantly, there will be no evidence that plaintiff
09:35 25 or anyone else expressed any concerns or problems with the

1 subject tire inflater or air hose prior to the accident.

2 Plaintiff may make a big deal that the tire inflater and
3 air hose is gone, and what you will not hear is any evidence of
4 any willful attempts to destroy evidence.

09:35 5 what you may hear is a timeline of events that included
6 when the accident happened in June of 2013 that Mr. Moore filed
7 a claim with workers' compensation, which was ultimately denied
8 in the fall of 2013. That he ultimately filed an untimely
9 appeal, but somewhere in there, the union filed a grievance not
09:36 10 on behalf of Ryan Moore, but on behalf of all the agents. And
11 when the agency was asked to look for the tire inflater and the
12 air hose, at that time, they looked, and they couldn't find it,
13 which was around December of 2013. And, of course, the
14 government wished that it had these tools. It would simplify
09:36 15 our defense.

16 More importantly, you'll hear testimony from at least two
17 border patrol agents who use the same tire inflater that day of
18 the accident, June 24, 2013. They used the tire inflater
19 properly and in the way it was intended to be used without any
09:36 20 problems.

21 The United States anticipates that the plaintiff may
22 introduce testimony about his character, and the government
23 does not doubt Agent Moore's character. What matters, however,
24 is what he did or didn't do on that particular day.

09:37 25 The evidence will show that plaintiff had ample time during

1 daylight hours to inflate his tire, but, for whatever reason,
2 he chose to do that at night in the dark without anyone around.

3 The Court will hear testimony that on Monday, plaintiff
4 arrived to work about 14 minutes early for his shift, and we
09:37 5 know that because he checked out the government keys and the
6 taser at 11:46 a.m. And yet instead of inflating the tire,
7 which their own expert estimated would take four to 12 seconds,
8 he chose to start work 14 minutes early.

9 The garage where the tire inflater was located was open
09:37 10 till 3:30 p.m. that day, Monday through Friday. Plaintiff's
11 work schedule that week happened to be Sunday to Thursday. So
12 he would be back to work the very next day around noon. The
13 tire had a maximum pressure rating of 30 PSIs. The plaintiff's
14 attorneys have admitted that. The testing results of the
09:38 15 manufacturer of the tire, Ames True Temper, their information,
16 which is submitted as part of their deposition, show that the
17 tire does not explode until the pressure gets over 120 PSIs,
18 which is over four times its recommended maximum pressure.

19 Both experts have conducted tests that show the subject
09:38 20 tire likely exploded at a pressure over 120 PSIs. And, in
21 fact, one of the plaintiff's tests shows that it exploded at
22 136 PSIs.

23 What you will not hear is any evidence about the accident
24 itself. The plaintiff doesn't remember. And there are no
09:38 25 witnesses.

1 The only evidence the plaintiff can present is his theory
2 that the tire inflater and air hose were somehow defective and
3 that such purported defect led to an accident or that there was
4 a failure to regulate down the pressure to the tire inflater.

09:38 5 Despite what counsel said, you actually will not hear any
6 evidence directly of what the PSI settings were that day. The
7 company that conducted maintenance for their three quarterly
8 maintenance inspections before the accident, they didn't record
9 any of the PSIs for either machine.

09:39 10 what the best that could be derived is that the machine
11 admittedly does have a maximum tank pressure of 200, but it's
12 factory set -- and that's also said in one of the depositions
13 that's being submitted to the Court of a witness who's not
14 available -- that it's factory set to 175 PSIs and that if it
09:39 15 even got close to 200, that's when one of the three safety
16 valves goes off, so it will never exceed 200.

17 The United States will show the plaintiff's theory doesn't
18 establish causation or is not otherwise supported by the
19 evidence.

09:39 20 The Court will hear from Eric Deyerl, an accident
21 reconstruction expert, who will explain the testing done to
22 show that the tire likely failed.

23 And he'll point out that there would have been clear red
24 flags that the tire would explode. The plaintiff either
09:40 25 ignored or failed to pay attention to them.

1 Ultimately the evidence will show that the only reasonable
2 inference to draw is that plaintiff's inattention or operator
3 error led to the unfortunate accident.

4 You will not hear any evidence about why plaintiff took his
09:40 5 tire to work that day. He doesn't remember. Yet -- and,
6 unfortunately, we may never know why he inflated a small tire
7 using an industrial air compressor. We will never know why he
8 didn't inflate it during daylight hours. We may never know why
9 he didn't, when he got to work early that day, stop and talk to
09:40 10 the garage mechanics who could have told him whether or not it
11 was a good idea to use an industrial compressor. We may never
12 know why he chose to take his tire to work, which was roughly
13 50 miles away, when he had previously inflated the same tire at
14 a 7-Eleven minutes from his house.

09:40 15 The United States stipulated to most of plaintiff's prior
16 medical bills as being related to the accident because it
17 acknowledges plaintiff suffered a significant injury.

18 Yet plaintiff is still seeking almost a million dollars in
19 future care, most of which relate to future dental care,
09:41 20 despite the fact that he has already had over \$100,000, maybe
21 close to \$150,000, of dental care already.

22 Plaintiff, through his experts' expected testimony, is also
23 claiming cognitive impairment. But as I noted earlier, the
24 testimony in this case will establish he lives by himself. He
09:41 25 drives. And he's been back to work on two different task force

1 assignments over the last 20 months.

2 This is a simple case based on the evidence, and based on
3 the evidence presented in the case, the facts will show that
4 the border patrol did not create a dangerous condition and was
09:41 5 not negligent.

6 The lack of any evidence of any prior complaints or
7 injuries will establish that the border patrol kept its
8 property in reasonably safe condition.

9 Ultimately there will be insufficient evidence for
09:41 10 plaintiff to meet his burden to show that it was the border
11 patrol's negligence rather than his actions or inactions that
12 day, and, therefore, at the end of this trial, we will ask
13 Your Honor to find in favor of the defendant.

14 THE COURT: All right. Thank you, Mr. Laske.
09:42 15 Plaintiff may call their first witness.

16 MR. WOHLFEIL: We call Agent Daniel Basinger.

17 DANIEL BASINGER,

18 PLAINTIFF'S WITNESS, SWORN

19 THE CLERK: would you state and spell your full name
09:42 20 for the record.

21 THE WITNESS: My name is Daniel Basinger. Last name
22 is B-A-S-I-N-G-E-R.

23 THE CLERK: D-A-N-I-E-L?

24 THE WITNESS: That's correct.

09:43 25 THE COURT: Agent Basinger, move the mike up. Keep

1 your voice up. You've got a soft voice. You've got to speak
2 loudly. Project toward the back wall.

3 Go ahead.

4 MR. WOHLFEIL: Thank you.

09:43 5 DIRECT EXAMINATION

6 BY MR. WOHLFEIL:

7 Q. Good morning.

8 A. Good morning.

9 Q. You work for the border patrol?

09:43 10 A. That's correct.

11 Q. Is that true since 2011?

12 A. That's correct.

13 Q. What station do you work at?

14 A. Chula Vista station.

09:43 15 Q. Were you working June 24, 2013, at the Chula Vista border
16 patrol?

17 A. Yes, I was.

18 Q. That night were you working with Agent Membreno?

19 A. Yes, I was.

09:43 20 Q. At some point that night, did you see Ryan Moore?

21 A. Yes.

22 Q. Was that a little bit after 9:00?

23 A. That's correct.

24 Q. Approximately 9:20?

09:43 25 A. Yes.

1 Q. Where did you see Ryan Moore?

2 A. That was behind the service garage at Chula Vista station,
3 about the northeast corner.

4 Q. What were you doing at the time?

09:44 5 A. Me and my partner, Membreno, were parking our
6 government-issued vehicle for the night.

7 Q. And when did you first see Ryan Moore?

8 A. It was approximately just after 9:20, and he was in that
9 corner just kind of doing small circles.

09:44 10 Q. At first you saw a man that you didn't recognize doing
11 small circles in that area?

12 A. That's correct.

13 Q. What did you do in response?

14 A. Me and Agent Membreno got out of our vehicle and ran up to
09:44 15 Agent Moore and to assess the situation.

16 Q. How did Ryan respond to that?

17 A. He was not really responsive, didn't -- kind of seemed like
18 he didn't know what was going on at the time.

19 Q. Did he begin walking away in another direction at some
09:44 20 point?

21 A. Yes.

22 Q. Which direction did he go?

23 A. He started walking south.

24 Q. At that point, though, he was unrecognizable to you?

09:45 25 A. Yes.

1 Q. Why was that?

2 A. His face was -- had lacerations on it that I could see, and
3 he was just unrecognizable. I didn't know exactly who it was
4 at first. I just -- it appeared to be an individual.

09:45 5 Q. Would you describe his injuries as very severe?

6 A. Yes.

7 Q. What did you notice -- did you notice any blood on his
8 face?

9 A. Yes.

09:45 10 Q. How much?

11 A. It was a substantial amount.

12 Q. Okay. What about his jaw? Did you notice that was
13 injured?

14 A. It appeared broken.

09:45 15 Q. And was he doing anything with his mouth, with his hands?

16 A. It appeared he was digging in his mouth.

17 Q. For what?

18 A. Possibly teeth. I wasn't really sure.

19 Q. Did you see teeth lying around the scene?

09:45 20 A. I don't recall.

21 Q. The blood was actually running down his face. Is that
22 right?

23 A. Yes.

24 Q. It appeared like dark spots?

09:46 25 A. I recall seeing a dark spot of blood.

1 Q. How many large cuts did you see on his face?

2 A. I don't recall.

3 Q. More than one, right?

4 A. I don't really recall.

09:46 5 Q. Was he talking at all?

6 A. No.

7 Q. Did he seem to be able to speak?

8 A. No.

9 Q. Could he move his jaw at all?

09:46 10 A. I don't recall.

11 Q. Did you call dispatch?

12 A. Yes.

13 Q. What did you report to dispatch?

09:46 14 A. That there was an injured agent behind the service garage
15 and we needed assistance.

16 Q. From an ambulance?

17 A. Yes.

18 Q. At some point did other agents arrive?

19 A. Yes.

09:46 20 Q. Who arrived?

21 A. Border patrol Agent Rolan Leon, supervisory Border Patrol
22 Agent Halulos. I don't recall his first name. And also Watch
23 Commander Jeff Melke.

24 Q. They arrived within minutes of your call to dispatch?

09:47 25 A. I don't recall exact timing.

1 Q. At some point did the fire department arrive?

2 A. Yes.

3 Q. Was that within minutes of the call to dispatch?

4 A. Can you repeat that?

09:47 5 Q. Did the fire department arrive at the scene within minutes
6 of your call to dispatch?

7 A. I don't recall exact timing of it all.

8 Q. When they arrived, did they start treating Mr. Moore?

9 A. Yes.

09:47 10 Q. What did they do for him that you saw?

11 A. From what I recall, they were bandaging his head.

12 Q. At some point, paramedics arrived. Is that right?

13 A. That's correct.

14 Q. Was that soon after the fire department arrived?

09:47 15 A. I would assume so.

16 Q. And did they take Mr. Moore off the base, off the station?

17 A. Yes.

18 Q. To the hospital?

19 A. I would assume so.

09:47 20 Q. At some point you actually helped secure the scene. Is
21 that right?

22 A. Yes.

23 Q. How did you do that?

24 A. I put up crime scene tape from the parking lot originally
09:48 25 where I found Mr. Moore, and then approximately the other side

1 to kind of tape off where I believe he was at.

2 Q. Okay. who asked you to do that?

3 A. I don't recall.

4 Q. The supervisor?

09:48 5 A. I don't recall.

6 Q. At some point did you talk to any members of the Critical
7 Incident Investigative Team, the CIIT team?

8 A. Yes.

9 Q. Who did you talk to?

09:48 10 A. Border Patrol Agent Lynsy Dornan.

11 Q. Was that that same night?

12 A. Yes.

13 Q. Okay. And what did you tell her?

14 A. From what I recall, I just told her what I found with
09:48 15 Agent Moore and where he was at and kind of a briefing.

16 Q. You also told her what you thought happened?

17 A. That's correct.

18 Q. What did you think happened?

19 MR. LASKE: Objection. Calls for speculation.

09:49 20 THE COURT: Sustained.

21 BY MR. WOHLFEIL:

22 Q. Agent Basinger, I'm sorry, you actually wrote a memo after
23 this. Is that right?

24 A. That's correct.

09:49 25 Q. Regarding what happened with Ryan Moore?

1 A. That's correct.

2 Q. Who did you address that memo to?

3 A. I don't recall exactly. I believe it was Daniel Parks.

4 Q. Okay. Why did you address it to Daniel Parks?

09:49 5 A. Because he's the patrol agent in charge of my station.

6 Q. He's management at the border patrol?

7 A. Yes.

8 Q. When did you write the memo?

9 A. Can you repeat that?

09:49 10 Q. When did you write the memo?

11 A. That same night.

12 Q. Agent Basinger, there's some binders behind you. Can you
13 pull out the one that contains Exhibit 308? 308. Do you have
14 308 in front of you?

09:50 15 A. Yes, I do.

16 Q. That's an aerial photograph of the Chula Vista border
17 patrol station, isn't it?

18 A. That's correct.

19 MR. WOHLFEIL: May I approach, Your Honor?

09:50 20 THE COURT: Yes.

21 MR. WOHLFEIL: 308.

22 BY MR. WOHLFEIL:

23 Q. Can you see on your screen Exhibit 308?

24 A. I do.

09:51 25 Q. Okay. I'll point with my finger.

1 So there's a perimeter fence that surrounds the entire
2 Chula Vista border patrol station, at least this part of it.
3 Is that correct?

4 A. That's correct.

09:51 5 Q. Did I just trace it with my finger?

6 A. Pretty close, yes.

7 Q. Okay. The red circle there, that's the VCO office
8 building. Is that right?

9 A. That's the service garage.

09:51 10 Q. The garage is basically the other half of that building.
11 Is that right?

12 A. That's correct.

13 Q. Where my finger is now?

14 A. That's correct.

09:51 15 Q. And up here in the corner is the shop compressors. Is that
16 right?

17 A. There is one located there.

18 Q. And the area where Ryan's SUV was parked that night is
19 where my finger is now. Is that right?

09:52 20 A. That's correct.

21 Q. That's also near where the inflater on the reel is made
22 available for filling up tires?

23 A. That's where one of the hose reels are.

24 Q. Okay. And, Agent Basinger, so you found Ryan -- what
09:52 25 turned out to be Ryan -- circling in this area. Is that right?

1 A. No.

2 Q. Where did you find him?

3 A. The northeast corner, so about there, just to the right.

4 Q. Right about there?

09:52 5 A. That's correct, in that corner.

6 Q. Okay. And when you say he went south, he went down this
7 way?

8 A. No, he went towards the right.

9 Q. Gotcha. That way?

09:52 10 A. That's correct.

11 Q. Okay. But he -- even though he's on his feet, he was
12 totally unresponsive. Is that right?

13 A. That's correct.

14 Q. Okay. Were you guys asking him to sit?

09:52 15 A. Yes.

16 Q. And did he sit when you asked him?

17 A. No.

18 Q. Agent Basinger, would you grab Exhibit 147 behind you?

19 Tell you what, Agent Basinger. Why don't you just look at the
09:53 20 screen.

21 Do you recognize the scene that's in 147?

22 A. Yes, I do.

23 Q. That's the scene where Ryan Moore was inflating his
24 wheelbarrow tires. Is that right?

09:53 25 A. It appears to be, yes.

1 Q. And that's police border patrol tape that you helped put
2 up?

3 A. I don't recall if I put that exact strand up, but yes.

4 MR. WOHLFEIL: Judge, I'll move into evidence 308 and
09:54 5 147-035.

6 THE COURT: Any objection to those?

7 MR. LASKE: Just for the record, counsel and I
8 stipulated to this in the pretrial order, so he doesn't have to
9 go through that process. All of 147 is in the record, should
09:54 10 be in the record.

11 THE COURT: All right 308, 147, in its entirety,
12 received.

13 (Exhibit 308 admitted.)

14 (Exhibit 147 admitted.)

09:54 15 MR. WOHLFEIL: No more questions.

16 THE COURT: Cross-exam.

17 MR. LASKE: Yes, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. LASKE:

09:54 20 Q. Good afternoon -- or good morning, Agent Basinger.

21 A. Good morning.

22 Q. What were the conditions like when you arrived at the
23 accident scene?

24 A. It was late at night, so it was dark out, but the lights in
09:54 25 the parking lot were on.

1 Q. And did they actually have a couple flood lights around the
2 tire-filling station?

3 A. The compound is generally lit, yes.

4 Q. I'd like to direct your attention to Exhibit 147, page 48,
09:55 5 and it will show up on your screen in a second.

6 So is this photograph a true and accurate depiction of the
7 Toyota 4Runner that evening?

8 A. Yes.

9 Q. And you can see in this photo there's actually two flood
09:55 10 lights that are on. Were they on that evening?

11 A. Yes.

12 Q. And was the Toyota 4Runner there when you arrived at the
13 scene, or did someone move it there?

14 A. It was there when I arrived.

09:55 15 Q. I now would like to direct your attention to Exhibit 147,
16 page 52. And, again, it will show up on the screen.

17 Was the rear driver's side door open?

18 A. Yes.

19 Q. And is this photograph a true and accurate depiction of
09:56 20 what you saw?

21 A. Yes.

22 Q. Where was the rim when you first saw it?

23 A. It appears to be right where it is in the picture.

24 Q. So it was at least several feet from his vehicle?

09:56 25 A. Yes.

1 Q. And where was the tire and the inner tubing when you first
2 saw that?

3 A. It looks to be right where it is in the picture, close to
4 the hose reel.

09:56 5 Q. Were the tire and inner tubing closer to the car than the
6 wheel was?

7 A. Yes.

8 Q. I'd like to -- I'd like to direct your attention to Exhibit
9 147, page 36.

09:56 10 Is this photograph a true and accurate depiction of the
11 location of the wheel that evening?

12 A. Yes.

13 Q. And of the tire and inner tubing?

14 A. Yes.

09:57 15 Q. And is this a pretty clear picture of the distance between
16 the two, at least that there is a distance between the two?

17 A. From what I recall, yes.

18 Q. And while you were at the scene, did anyone move these
19 items around?

09:57 20 A. Not that I saw.

21 Q. And is -- I'd like to now direct your attention to Exhibit
22 147, page 9. And is the tire and tube that evening -- was that
23 the condition it was in when you saw it?

24 A. From what I recall, yes.

09:57 25 Q. And then I would like to direct your attention to Exhibit

1 147, page 26.

2 And was the wheel in this condition when you saw it?

3 A. Yes.

09:58 4 Q. Are the items depicted in the photographs that I've just
5 shown you -- are they in the same places as when you first saw
6 them?

7 A. Yes.

8 Q. And have you ever seen a tire explode at the Chula Vista
9 station?

09:58 10 A. No.

11 MR. LASKE: Nothing further, Your Honor.

12 THE COURT: Any redirect?

13 MR. WOHLFEIL: No, Your Honor.

09:58 14 THE COURT: All right. May Agent Basinger be excused
15 as a witness?

16 MR. WOHLFEIL: Yes, Your Honor.

17 THE COURT: Thank you. You may stand down. You're
18 excused as a witness.

19 Next witness.

09:58 20 MR. CHAMBERS: Just for planning purposes, does the
21 Court intend to take a mid-morning break or not?

22 THE COURT: I do, but not for a while.

23

24

25

1 MR. CHAMBERS: We'd like to call David Rondinone.

2 DAVID RONDINONE,

3 PLAINTIFF'S WITNESS, SWORN

4 THE CLERK: would you state and spell your full name
09:59 5 for the record.

6 THE WITNESS: David Rondinone, D-A-V-I-D
7 R-O-N-D-I-N-O-N-E.

8 DIRECT EXAMINATION

9 BY MR. CHAMBERS:

09:59 10 Q. Good morning, Dr. Rondinone.

11 You are a mechanical engineer. Is that correct?

12 A. That is correct.

13 Q. Can you give us a brief rundown of your education?

14 A. Let's see. I have a Bachelor of Arts in astrophysics, I
10:00 15 have a Bachelor of Science in engineering physics, I have a
16 Masters in mechanical engineering, and a Ph.D. in mechanical
17 engineering.

18 Q. And you're a registered engineer in the state of
19 California?

10:00 20 A. Yes, I'm a Professional Engineer.

21 Q. How long have you maintained that license?

22 A. That license has been approximately 20 years, give or take.

23 Q. Do you maintain any other professional licenses?

24 A. No, just that.

10:00 25 Q. And you currently work for an outfit called BEAR?

1 A. Yes, Berkeley Engineering and Research.

2 Q. And what is your title with them?

3 A. I am -- I guess a senior mechanical engineer. I'm also a
4 principal in the company.

10:00 5 Q. And how long have you been with BEAR?

6 A. Over 20 years, maybe 23 and a half.

7 Q. And what sorts of things do you do as a senior mechanical
8 engineer?

9 A. I perform mechanical engineering analyses both for
10:01 10 litigation-related failures and concerns as well as for design,
11 inspection, research, design review, and other projects that
12 don't involve litigation.

13 Q. And part of what you do also is failure analysis?

14 A. Yes.

10:01 15 Q. Is that a large part of what you do?

16 A. Yes.

17 Q. And how many years would you say you've been doing failure
18 analysis?

19 A. The whole time.

10:01 20 Q. All 20 years?

21 A. Yes.

22 Q. And have you ever worked on systems like we're talking
23 about here today, compressed air or pressurized systems?

24 A. Yes.

10:01 25 Q. Can you tell us a little bit about your experience with

1 those?

2 A. Sure. I've worked on a large number of vehicle cases that
3 have involved tires and wheels and those pressurized systems.
4 I've worked on other compressed air or compressed gas systems
10:02 5 in refineries and power plants, on heavy equipment, and
6 probably a number of other places as well. I've worked on
7 compressed gas and liquid systems where you've got both phases
8 in there. I've worked on pressurized fluid systems. And they
9 all basically work on the same principle, that you take a
10:02 10 fluid, whether it be a liquid or a gas, and you pressurize it
11 in order to get it to perform work.

12 Q. So it sounds like you've got a fair amount of experience in
13 this realm?

14 A. Yes.

10:02 15 Q. Have you worked on tire cases where there's allegations or
16 instances where tires have exploded?

17 A. Yes, I've worked on a number of different tire failures
18 under various different types of failures.

19 Q. And has that been true for your entire time with BEAR?

10:02 20 A. Yes.

21 Q. And you've been published fairly extensively also, haven't
22 you?

23 A. Yes, I have a couple of peer-reviewed publications and a
24 number of published reports and whatnot, a couple of patents.

10:03 25 Q. And you were hired by my law firm in this case. Is that

1 right?

2 A. Yes.

3 Q. And you've been paid by my law firm for your work in this
4 case?

10:03 5 A. I assume so. I don't really keep track of that.

6 Q. I assume so too.

7 what were you asked to do in this case?

8 A. I was asked to investigate an event where a wheelbarrow
9 tire -- I should say a tire assembly failed and caused an
10:03 10 injury.

11 Q. And what did you do to accomplish the scope of work that
12 you were provided?

13 A. I looked at the subject wheel assembly, which included the
14 wheel and the tube and the tire. I reviewed the documents that
10:04 15 were provided that were related to the event, either witnesses
16 or people with information pertinent. I think I reviewed a
17 report that was performed or provided that was an investigation
18 that was done before I was part of the case. I also looked at
19 some exemplar wheel assemblies and tested a few of them as
10:04 20 well.

21 Q. So you performed some testing in the case as well?

22 A. Yes.

23 Q. What was the purpose of performing testing in your mind?

24 A. The purpose of the testing was to evaluate the failure
10:04 25 mechanism primarily for basically how this thing failed. It

1 was to look at the deformations of an exemplar under a
2 particular loading to verify the mechanism of failure.

3 Q. And do you recall whether that testing was performed?

4 A. It was about a year ago, but I don't recall the exact date.

10:05 5 Q. Okay. And did you have an opportunity to review any of the
6 defense experts reports and materials?

7 A. Yes, I did.

8 Q. That was part of the documents you reviewed in the case?

9 A. Yes.

10:05 10 Q. And did you also conduct a visit out to the border patrol
11 facility where this occurred?

12 A. I did.

13 Q. Do you recall when that was?

14 A. I don't recall the date on that. I believe it was about a
10:05 15 year ago as well.

16 Q. I'm going to show you just a couple of photos. Actually,
17 I'll take that back. I'll show it to you on the ELMO. This is
18 Exhibit 390, which is a thumb drive, and the picture is 9688.

19 And do you recognize this photo?

10:06 20 A. Yes, this looks like the hose reel at the facility.

21 Q. And was this a photo that you took during one of your
22 inspections?

23 A. It certainly looks like it, yes.

24 Q. And the sort of red thing in the center of the picture,
10:06 25 that's where the hose reel would have been located that

1 Mr. Moore was using?

2 A. Yes.

3 Q. I'm going to show you Exhibit 390, photo 9724.

4 Do you recognize this?

10:06 5 A. Yes.

6 Q. And what is it?

7 A. This is the -- I would call it basically the compressor
8 room, if you will, the compressor location where the air
9 compressors were located at the facility.

10:06 10 Q. And is it your understanding that what we're looking at
11 here in Exhibit 390 was the same setup as the night that
12 Mr. Moore was injured?

13 A. No, it was my understanding that it is different.

14 Q. How so?

10:06 15 A. The compressor on the left, which I believe is a NAPA
16 compressor at the time of my inspection was the primary
17 compressor providing compressed air to the facility. That
18 compressor was not present at the time of the event. There was
19 another compressor in its place. The compressor to the right
10:07 20 in this photograph -- I believe is an Ingersoll-Rand
21 compressor -- it was at the time of my inspection appeared to
22 be set up as a secondary compressor or a backup. I believe
23 that was present at the time and was operating as the primary
24 compressor.

10:07 25 Q. Now, when you talk about primary and secondary, what do you

1 mean by that?

2 A. The system has two different compressors that are tied
3 together through the air piping system. One compressor
4 performs nearly all the work. When it's not capable of
10:07 5 performing the work, for whatever reason, it can't keep up with
6 the load or it fails for some reason, it stops working, then
7 the secondary compressor can be used to maintain operation of
8 the compressed air system.

9 Q. And it's your understanding that the white or cream-colored
10:08 10 one on the right-hand side of Exhibit 390, that would have been
11 the primary compressor on the evening Mr. Moore was injured?

12 A. That's my understanding, yes.

13 Q. And during your site visit, did you endeavor to find out
14 what the pressures involved from that compressor were?

10:08 15 A. Well, at the time of the -- at the site inspection, we
16 could see gauges on both compressors. I believe the gauge on
17 the Ingersoll-Rand compressor was reading 180 PSI, which was
18 slightly higher than somewhere in the 160s where I believe the
19 NAPA was reading. And so the day of my inspection, I would say
10:08 20 it was certainly in the 160 to 180 range at least,
21 approximately.

22 Q. And that's PSI?

23 A. PSI, correct.

24 Q. And we've heard in reference -- in opening statement to a
10:08 25 cut-in and cut-out pressure. Can you explain that for us?

1 A. Sure. A cut-in pressure is the pressure in which the
2 compressor cuts in or starts to compress air. And that's a low
3 bound where during the use of the system, the pressure will
4 decrease as the air is used. When it reaches a low point, the
10:09 5 system determines that that point has reached, and then it
6 starts the compressor. The compressor then runs continuously
7 until a high point is reached, or the cut-out point, or the
8 cut-off point. And then it stops.

9 Q. So this may be a dumb question, but is it fair to say if
10:09 10 you have a cut-in pressure of 160 and a cut-out pressure of 180
11 that you're going to be dealing with pressures somewhere
12 between those two numbers in terms of output?

13 A. Yes, you're always running between your cut-in and your
14 cut-out pressures, at least ideally. I suppose it's possible
10:09 15 that, you know, you have this huge air leak in the system and
16 the compressor simply can't keep up, so it could be lower, but
17 that would probably require complete failure of the system.

18 Q. And you didn't observe any air leaks or anything during
19 your inspection, did you?

10:10 20 A. No, no, it was functioning properly when I was there.

21 Q. All right. I'm going to show you Exhibit 390, photograph
22 9838.

23 Do you recognize this photo?

24 A. Yes.

10:10 25 Q. What is it?

1 A. That appears to be the compressor that was represented as
2 being the old secondary compressor that used to be in that
3 picture that we saw just a moment ago. This was the one that
4 was replaced by the NAPA compressor, at least that's what was
10:10 5 represented to me.

6 Q. And was this plugged in and functional during your
7 inspection?

8 A. No, it was not.

9 Q. Were you able to test it or ascertain any information from
10:10 10 it?

11 A. No.

12 Q. One last one, which is Exhibit 50. And it looks to be just
13 a closer-up version of the two compressors that you observed at
14 the border patrol facility during your inspection?

10:11 15 A. That is what it appears to be, yes.

16 Q. Does that fairly and accurately show what you observed out
17 there that day?

18 A. It appears to.

19 MR. CHAMBERS: I'd like to offer Exhibit 390,
10:11 20 photographs 9838, 9688, 9724, and Exhibit 50 into evidence.

21 THE COURT: Any objection to those photos?

22 MR. LASKE: Sorry. Did you say 9724?

23 MR. CHAMBERS: Exhibit 390, which is a thumb drive, so
24 there's identified photos there. We can pull it out later.

10:11 25 MR. LASKE: No objection.

1 THE COURT: All three exhibits are admitted.

2 (Exhibit 9838 admitted.)

3 (Exhibit 9688 admitted.)

4 (Exhibit 9724 admitted.)

10:11 5 (Exhibit 50 admitted.)

6 BY MR. LASKE:

7 Q. After you performed your testing and you conducted this
8 site visit and you looked at all the materials that have been
9 provided to you, did you form any opinions in this case?

10:11 10 A. I did.

11 Q. Did you prepare any written version of those opinions?

12 A. I did.

13 Q. Can I take a look at Exhibit 137, please?

14 Is this the report that you prepared?

10:12 15 A. That does appear to be it, yes.

16 Q. All right. why don't we walk through this, and you can
17 kind of help me along and explain what it is you're talking
18 about here.

19 It looks like the first section here is just your
10:12 20 background and qualifications?

21 A. Yes.

22 Q. Let's not belabor that. If we could go to page 2, please.
23 If you look at item G, it says that you've designed
24 pressurized systems.

10:12 25 A. Yes, I have.

1 Q. What sorts of pressurized systems have you designed?

2 A. Let's see. The systems that I've designed, the ones that I
3 recall are compressed natural gas systems where you have
4 pressurized natural gas being piped usually through either a
10:13 5 refinery or some type of transmission from source to use. I've
6 designed other pressurized systems that are lower pressure
7 systems that are intended to operate in very large vessels at
8 high temperatures. Let's see. In terms of design, I know
9 there have been others, but those are the ones that come to
10:13 10 mind.

11 Q. Fair enough.

12 The case background portion of your report here, what is
13 that?

14 A. That's just a brief summary of the information that I was
10:13 15 able to glean from the documents that basically collects on to
16 a single page, sort of the basic -- the basic information about
17 time and date and what -- what basically happened. It's not
18 intended to be a detailed description, only sort of a basic
19 collection and overview.

10:14 20 Q. Okay. If you look at subsection F, you're talking about
21 what we talked about before, that it was powered by an
22 Ingersoll-Rand compressor. Is that right?

23 A. Yes.

24 Q. And you mentioned that the line to the tire filling hose
10:14 25 was unregulated. What do you mean by that?

1 A. Well, when you have a compressed air system, the compressor
2 generates a certain amount of pressure, and it tries to
3 maintain that pressure. That's what the cut-in and cut-out
4 pressures are for.

10:14 5 That air is then piped around a facility using typically
6 hard pipes, steel pipe, although you can use other materials as
7 well.

8 When it gets near to its points of use, you have the
9 opportunity to control the pressure to a lower -- a lower value
10:14 10 so you can regulate the pressure down.

11 For example, in this case, the system pressure is about 175
12 at its peak probably, and if you have a device that's intended
13 for only 90 PSI operation, you would need to put a regulator in
14 the piping before you reach that device so that you only supply
10:15 15 90 PSI or 95 PSI.

16 This is done at numerous places at the facility. I
17 personally saw a regulator with a gauge on it that read a
18 little bit under a hundred branching off of the piping that
19 went to the subject tire inflation station. And it was
10:15 20 regulated to a pressure that, in my opinion, is consistent with
21 using power tools, power pneumatic tools.

22 The gentleman who --

23 MR. LASKE: Objection. I move to strike that there's
24 no foundation for his assumption that it's hooked up to power
10:16 25 tools unless he can say he saw that.

1 THE COURT: I think he said in his experience the
2 regulator was set to a PSI that would correspond to use of
3 those tools.

4 Is that what you testified to?

10:16 5 THE WITNESS: Yes, correct.

6 THE COURT: The objection is overruled.

7 THE WITNESS: And then there was -- I believe one of
8 the gentleman who worked at the facility stated that there were
9 numerous other devices that ran off of compressed air that were
10:16 10 regulated down to something in the neighborhood of 90 to 100
11 PSI depending on the device.

12 So we know from both the documentation and from my
13 inspection that the facility is aware of pressure regulation
14 and, in fact, performs pressure regulation at numerous
10:16 15 locations.

16 BY MR. CHAMBERS:

17 Q. If I understand what you said a moment ago, did you see a
18 regulator on the line coming from these compressors to the
19 tire-filling station that Mr. Moore was using that evening?

10:16 20 A. No, the line to the tire-filling station was unregulated.
21 There was no regulator between the pressure assembly and the
22 tire-filling station.

23 Q. Does that mean that whatever pressures are being put out by
24 the compressor would be fed through the inflater itself?

10:17 25 A. That's correct.

1 Q. Can you turn to page 3 of your report, please? why don't
2 you walk us through your analysis and methodology, if you
3 would, please.

4 A. Sure. Basically what I'm describing in this section of the
10:17 5 report is what was done, what approach that I used, and what
6 did I do.

7 The first thing mentioned is that the actual inflater
8 assembly, the valve and gauge and little hose section, wasn't
9 available for inspection. we didn't have that. It's my
10:17 10 understanding that it was kept for a long period of time, I
11 think is how it was described, but then discarded or lost or
12 thrown away. I don't know where it is. It was never available
13 for inspection.

14 Then I'm also mentioning here that there were some photos
10:18 15 taken of the location shortly after the event which do show the
16 inflating device, they show the hose, they show a couple of
17 other things. I was able to look at the subject wheel
18 assembly, the wheel and inner tube and tire. That's also
19 listed here. I was able to test those and also compare the
10:18 20 testing values that I had with True Temper's documentation of
21 their internal testing.

22 Q. And True Temper is who?

23 A. True Temper is the -- I believe -- I would call them the
24 manufacturer of the wheel assembly, but they actually
10:18 25 outsource, I believe, the manufacturing of the component parts.

1 And then there's just a quick mention that the True Temper
2 testing and my testing of an exemplar are about the same in
3 terms of their resulting pressures about 135 PSI. I think True
4 Temper actually had quite a range. They did a large range of
10:19 5 testing, and they went, I think, all the way up to 180 PSI. I
6 think they had a few failures in their documents below 120, but
7 not much. I think 120 is pretty much the low point.

8 But they're consistent with the testing that I did, which
9 was basically the purpose of the testing was to validate that
10:19 10 as well as to determine the mechanism of failure.

11 Then I have a quick mention that the subject tire, which is
12 the rubber part that you see going around the metal wheel, and
13 that's the part that actually touches the ground. Although it
14 did show signs of age, it didn't show any signs of failure, and
10:19 15 it didn't really contribute to this failure. I talk a little
16 bit more about why that is in terms of how the tire gets its
17 strength and how the inspection of the tire revealed that it
18 still maintained its strength and really didn't fail in this
19 incident. The rubber itself did not.

10:20 20 Then we go on. I mention a little bit what we've already
21 talked about with the compressors that were available onsite at
22 the time of my inspection. There was the NAPA compressor,
23 which was the primary compressor at the time of my inspection,
24 and it was running at about 160 PSI. And the secondary
10:20 25 compressor, the Ingersoll-Rand, at the time of my inspect was

1 reading 180 PSI, although it didn't -- because it was the
2 secondary, it wasn't functioning to bring the pressure up and
3 down. So that wasn't functioning at the time of my inspection.

4 And then we talk a little bit about the regulators.

10:21 5 There's a mention here of the regulator that I just discussed,
6 the one that wasn't present in this piping that was heading and
7 branched off of the piping that goes to the tire inflation
8 assembly. That, in my opinion, is consistent with a power tool
9 that was a little less than a hundred PSI.

10:21 10 And then there's a quick note on the reference to the
11 actual tanks that store the air on the compressors. They're
12 the large cylindrical tanks. They're rated at 200 PSI, which
13 doesn't tell you specifically what the compressors run at, but
14 it does tell you that the compressors were never intended
10:21 15 to -- by design to run higher than that because that would be
16 unsafe for the compressor itself.

17 Q. I'm sorry to interrupt you. These compressors and the
18 amount of PSI that they're putting out, are these
19 industrial-type compressors?

10:21 20 A. Yes, yes, they are.

21 Q. So this is a lot different than you get, you know, at your
22 typical Home Depot or something?

23 A. Yeah, this isn't the kind of small compressor that you put
24 in your garage and carry around. This is sort of a permanent
10:22 25 mounted, heavy-duty compressor.

1 And then I think we go to the next page. That pretty much
2 covers that page.

3 Q. Why don't we go to page 4. I think now we're diving into
4 your opinions. Is that right?

10:22 5 A. Well, there's just one more mention of the analysis and
6 methodology section, which is that there is a California Code
7 of Regulations regulation that specifies what the recommended
8 operation of a tire inflation station should be, meaning they
9 say something about how you should be able to open and close
10:22 10 the valve a little bit, meaning it has to be at least 24 inches
11 from the actual filling point of the tire, that it should have
12 a clip-on gauge --

13 MR. LASKE: I'm sorry, but we object to this. It's
14 irrelevant. We're a federal facility on federal land with
10:22 15 federal employees, and he's talking about a California
16 regulation without setting any foundation for him to be able to
17 offer that opinion.

18 MR. CHAMBERS: I think there's a difference in opinion
19 between the experts, Your Honor, that we're going to hear about
10:23 20 in just a moment.

21 THE COURT: That may be. The point of the objection
22 is that they're not subject to this California regulation. I'm
23 not sure that it's not relevant. You know, the fact that there
24 is some regulation of these devices by someone, you know, in
10:23 25 the great scheme of things, that may be relevant.

1 You're not suggesting that the federal government's bound
2 by this California regulation?

3 THE WITNESS: No.

4 THE COURT: All right. The objection is overruled.

10:23 5 You may finish your answer.

6 THE WITNESS: Yes, so the California regulation, which
7 is intended for California workplaces and is intended to ensure
8 a safe workplace, or at least as close as they can because
9 nothing is ever perfect, but they actually recommend a
10:23 10 particular way that a filling station should operate that fills
11 tires. It should have a clip-on device so that you don't have
12 to hold the device to the stem of the tire while you're filling
13 it. You can clip it and then move back. Also requires two
14 feet of hose so that you can move back to a safe distance. And
10:24 15 then an alternative.

16 THE COURT: You say "requires." Are these
17 requirements or are they suggestions?

18 THE WITNESS: These are -- so I'm not -- I don't
19 pretend to be a lawyer. I don't know what the legal
10:24 20 enforceability of the California Code of Regulations are.

21 THE COURT: Does the state, for example, impose this
22 requirement on public gas stations?

23 THE WITNESS: I believe they impose it on workplaces,
24 and I'm not certain that a public gas station would be included
10:24 25 there.

1 The purpose of it is to lay out a series of rules that
2 ensure a safe workplace, and the only reason I'm using it as a
3 reference is because it's a well-established set of
4 recommendations, if you will, or rules that have been set
10:24 5 forth, at least for workplaces, to ensure that that workplace
6 is safe. Exactly where you could legally enforce it, I'm not
7 going to speak to.

8 THE COURT: Okay. All you're saying is it's a set of
9 standards. You believe the purpose of these standards is
10:25 10 to -- is to promote workplace safety when it comes to using
11 inflaters?

12 THE WITNESS: Correct.

13 THE COURT: You mentioned one of the standards was
14 that there should be a two-foot section that's a clip-on, not a
10:25 15 hold on.

16 THE WITNESS: Yes.

17 THE COURT: What are the other standards?

18 THE WITNESS: And the other recommendation -- and this
19 is sort of an and/or, you could do one or the other I believe
10:25 20 by the way that it's phrased -- is that you limit the pressure
21 at the tire-filling station, and the recommendation they give,
22 for example, for passenger vehicle tires is 40 PSI limit, so a
23 regulation at 40 PSI. And that's the example they give for
24 passenger car tires. It would be different for different types
10:25 25 of tires, but that's a good ballpark.

1 THE COURT: Okay. what about industrial vehicles? Is
2 there a standard particular to larger-type vehicles? In this
3 case, this is a border patrol station. They have ATVs.
4 Presumably they have vehicles that are capable of carrying
10:26 5 people in the back, capable of being on nonpaved roads. My
6 impression would be probably thicker, bigger tires.

7 THE WITNESS: Yeah, so most of those vehicles would
8 probably still fall under the 40 PSI range. The ATVs -- I
9 believe someone at the border patrol testified in deposition
10:26 10 that it was less than 10 PSI for what they used there.

11 THE COURT: My question is regarding the standards
12 that you've referenced, the California standards, did they
13 differentiate between a public gas station or a place where it
14 would be likely that only passenger cars would use the
10:26 15 inflation device to increase the air pressure in tires? They
16 differentiate between a place like that and a place where
17 larger, more industrial use type vehicles are having tires
18 inflated?

19 THE WITNESS: They do, and there's a different
10:27 20 regulation for very heavy load, like 18-wheeler tires intended
21 to hold a hundred thousand pound load in the trailer.

22 THE COURT: Does the regulation different in terms of
23 the recommendation for PSI?

24 THE WITNESS: Yes, the pressure would be higher for a
10:27 25 heavily loaded trailer tire.

1 THE COURT: A tractor-trailer, what would it be as an
2 example under the regulation?

3 THE WITNESS: I don't know what the regulation says
4 specifically for that. Based on my experience with those types
10:27 5 of tires, 80 PSI is common. Very heavy, heavily loaded
6 trailers may be as high as 105 PSI at the very outside, but
7 that's -- I think that's something well beyond what we're
8 talking about you would see at a facility like this. That's
9 like a long haul, a very heavy-load trailer.

10:28 10 THE COURT: All right. Go ahead.

11 BY MR. CHAMBERS:

12 Q. And on that point, Dr. Rondinone, did you see any reference
13 in the record to this particular tire-filling station being
14 used to fill heavy load equipment or 18-wheelers or anything
10:28 15 like that?

16 A. No, the reference that I saw in the deposition testimony
17 was that it was used to fill passenger vehicle tires, and by
18 that I mean pickup trucks and other types of light-utility
19 vehicles. It's also used to fill ATVs, which we mentioned had
10:28 20 much lower tire pressure. I believe it's used to fill mountain
21 bike tires.

22 My experience with mountain bike tires is a typical
23 pressure could be as high as 65, 70 I think on the top end.
24 Although for tires that are used in an off-road environment,
10:28 25 you typically set the pressure lower so that the tire can form

1 around objects that are sharp and chunky. So, actually, that
2 would give you a lower pressure intended.

3 Q. Let's go ahead and dive into your opinions, which are a
4 little further down on page 4. And we'll start with A. If you
10:29 5 could kind of describe that for me, and then I'll have some
6 questions for you.

7 A. Sure. Basically the opinion A is that we don't -- we'll
8 never really know exactly what pressure was involved at the
9 time of the accident because it wasn't recorded. But what we
10:29 10 do know is that the Ingersoll-Rand compressor that was used has
11 sort of a default value of 175 PSI, which I believe is
12 consistent with the testimony of the Ingersoll-Rand
13 representative as well as the representative who did work at
14 the facility. But whether the regulated pressure at the
10:29 15 compressor is set to 160 or 180 or 140 doesn't really matter
16 because all of those pressures are far too high for the safe
17 operation of a tire-filling station. And that's all that we've
18 got in the first section there.

19 THE COURT: Did you assume that the Ingersoll-Rand
10:30 20 compressor had anything to do with this incident? I thought it
21 was the secondary or the backup.

22 THE WITNESS: It was the secondary at the time I did
23 my inspection, but things had been changed between the day of
24 the incident and my inspection.

10:30 25 THE COURT: Did you talk to anyone about which was the

1 primary between the one that was apparently setting off to the
2 side when you visited?

3 THE WITNESS: So the one that was completely
4 disconnected, that was in a completely different location on
10:30 5 the facility. It was nowhere near.

6 THE COURT: Did anyone with a historical connection to
7 the incident tell you which one was primary on the day of the
8 incident?

9 THE WITNESS: I gathered from the deposition testimony
10:30 10 that the one that I saw stored in some back space was the
11 secondary and the Ingersoll-Rand was the primary at the time of
12 the incident, but nobody told me that, I don't think,
13 personally. I think I just got that from the documentation.

14 THE COURT: All right. So you think that the primary
10:31 15 one, the one that fed the air hose that the plaintiff used, was
16 the Ingersoll-Rand? That's what your understanding?

17 THE WITNESS: That's my understanding, yes.

18 THE COURT: All right. Go ahead.

19 BY MR. CHAMBERS:

10:31 20 Q. And on that particular compressor, what you're saying is
21 that it comes from the factory with cut-in and cut-out
22 pressures between 145 and 175 PSI? Am I hearing you right?

23 A. I don't recall what the cut-in pressure is on the low side.
24 145 is certainly reasonable, but I believe the cut-out pressure
10:31 25 was set at 175 at its peak.

1 Q. And you're saying during your site inspection and your
2 visit there, when you looked at the Ingersoll-Rand, it was 160
3 to 180?

4 A. Yeah, the gauge on the Ingersoll-Rand, I believe, was
10:31 5 reading 180.

6 Q. Irrespective of which one of those settings we're going
7 with, you're saying that was much more than was necessary to
8 safely fill vehicle tires?

9 A. Exactly.

10:32 10 Q. And this particularly -- particular filling station that
11 Mr. Moore was using, it's your understanding that that was used
12 exclusively to fill tires?

13 A. That is my understanding.

14 Q. So this wasn't an outfit where they would plug in other
10:32 15 pneumatic tools or other machinery to that. Is that right?

16 A. That's correct. That's my understanding.

17 Q. Do you have an opinion as to whether or not compressors
18 with that sort of output are safe to fill small-volume tires
19 like Mr. Moore was filling that evening?

10:32 20 A. They are if the pressure was regulated after the compressor
21 but before the filling station.

22 Q. How about if it's unregulated like the condition that
23 existed throughout? Is it safe?

24 A. If it's unregulated, it's unsafe. You're clearly capable
10:32 25 of applying pressures that far exceed what's required and can

1 certainly exceed even the failure pressures of the system.

2 Q. And I presume then it would impose a risk of harm to
3 whoever was using it?

4 A. That's correct.

10:32 5 Q. Let's go ahead and move to your second opinion, which is B.

6 A. Sure. The second opinion talks about the actual failure of
7 the wheel assembly itself. And basically what the failure of
8 the wheel assembly tells us is that the tire did not fail. The
9 inner tube didn't fail first. It tore open once the metal
10:33 10 wheel deformed. And the metal wheel deformed because it was
11 exposed to an excessive pressure, a pressure well beyond its
12 intended use.

13 I've got three pictures here that basically show the
14 subject wheel on the left, it shows a wheel that I tested in
10:33 15 the middle, and a wheel that True Temper tested on the right.
16 And what's important in this comparison is that they all buckle
17 in essentially the same way. They all buckle inwards towards
18 the axle, and that's -- when I say "inwards," I mean towards
19 the axle. Obviously, it's outwards as regards the internal
10:34 20 pressure of the tire that would have been on there, but they
21 all look the same, and that's how we can come to the conclusion
22 that this wheel failed because it was exposed to excessive
23 pressure because of the mechanism of failure.

24 Q. And just so I'm clear, you're saying the actual metal
10:34 25 portion, the rim, is the part that failed, correct?

1 A. That's correct.

2 Q. Now, let's talk for a moment about the testing that you
3 conducted to come to this conclusion that we see in number B
4 here.

10:34 5 What was the purpose of the testing that you performed?

6 A. So the purpose of the testing was to essentially evaluate
7 the mechanism of failure, to determine why it is that this
8 particular wheel failed. And so I needed -- to do that, I
9 needed to run a test to a pressure that the wheel could have
10:34 10 seen in the field at the facility and determine whether or not
11 that pressure would lead to a failure that looks like the
12 failure that we have, and the answer is yes, it does.

13 Q. So the purpose of your testing was simply to confirm the
14 failure mechanism that we see in those pictures?

10:35 15 A. That was the purpose, yes.

16 Q. In other words, that the rim itself folds down as opposed
17 to some other mechanism?

18 A. Correct.

19 Q. And how many tests did you run?

10:35 20 A. Just two of that kind of test.

21 Q. And what sorts of -- I assume they were exemplar tires?

22 A. They were exemplar tire and wheel assemblies that were
23 bought new.

24 Q. So you purchased some new exemplars. Were they the same as
10:35 25 the one that Mr. Moore was using that evening?

1 A. They were similar. They were a slightly newer design where
2 the lip of the bead or the flange where the tire meets the
3 wheel has been rolled over, so, if anything, they might be
4 slightly stronger than the subject, although they're, in my
10:35 5 opinion, substantially similar and would give results that are
6 similar.

7 Q. But the folding over of the rim is like a reinforcement, or
8 how would you describe it?

9 A. Yeah, the reason you would fold the steel over at that
10:36 10 location is to make it stronger, basically.

11 Q. So your testing wasn't intended to be a recreation or
12 reconstruction of exactly what happened to Mr. Moore that
13 evening?

14 A. That's correct.

10:36 15 Q. And in the two tests that you performed, can you kind of
16 describe the setup for us?

17 A. Sure. Basically I took a tire and wheel assembly, and I
18 placed it inside of a steel box with a very thick polycarbonate
19 window. I attached a hose through the steel at the side of the
10:36 20 steel box to connect to it the assembly, and then outside of
21 that box, I guess that box was placed inside of a steel
22 container, which was then closed, and outside of everything, I
23 used a source of compressed air which was simply the compressor
24 at my own laboratory. And I opened and closed a valve to allow
10:37 25 air into the tire wheel assembly, and I did it in a stop-and-go

1 process so that we could run it, add air, stop it, check the
2 pressures, add some more air, so it wasn't like I was trying to
3 replicate just holding the valve and filling as fast as I
4 could. It was a stop-and-go process. And then it just, you
10:37 5 know, repeat until failure.

6 Q. And when they failed, did you record what the pressure
7 inside the tire was?

8 A. Yes, it was approximately 135 PSI.

9 Q. And did you record how long it took from the time that you
10:37 10 started applying air until the tire failed?

11 A. Not directly because I was doing a start stop. That time
12 obviously doesn't correspond to the fill time, but if you look
13 at the actual starting and stopping in my testing, it was
14 about, I would say, a little less than a minute of filling time
10:37 15 on average to reach a failure.

16 Q. And, again, this is with the reinforced wheels, the new
17 design?

18 A. That's correct.

19 Q. So would you expect them to take a little longer perhaps
10:38 20 than Mr. Moore's?

21 A. They could. If anything, it would be conservative.

22 THE COURT: What was the starting PSI?

23 THE WITNESS: I started at zero.

24 BY MR. CHAMBERS:

10:38 25 Q. And that raises a good question. Assuming that the tire

1 wasn't at zero, if you started at some number above zero, would
2 you also see a corresponding reduction in the time that it took
3 to fail?

10:38 4 A. Yes, if you start at a number above zero, the time would be
5 shorter.

6 Q. So it sounds like your tests were -- I don't want to put
7 words in your mouth, but fairly conservative. Is that
8 accurate?

9 A. They were. That's exactly correct.

10:38 10 Q. And did you have an opportunity to review the defense
11 mechanical engineer's testing?

12 A. I did.

13 Q. And what was the general synopsis, the CliffsNotes version?

14 A. My understanding of his testing was that he did a
10:38 15 continuous fill. It wasn't a stop and go. He was able to fill
16 the tire to failure I think in about half a minute, so faster
17 than my testing. And he got failure pressures that were
18 similar to what I got. I think he had a range of numbers. The
19 one that's coming to mind is in the mid-120s, but I believe he
10:39 20 had a range as well. And I think that the -- I think that
21 otherwise they were -- the testing was very similar. He also
22 used a remote filling assembly like I did so that he didn't
23 have to hold the gauge on either.

24 Q. All right. Anything else about number B there that we
10:39 25 haven't discussed?

1 A. No, I think we've covered it.

2 Q. All right. Let's move on to C. And this one sounds to be
3 like you're just saying that there was a tremendous amount of
4 energy that would have come about when the tire failed?

10:39 5 A. Yes, so basically what I'm saying here is that when you
6 compress air or any gas, you store a great deal of energy into
7 that compressed gas. And when you get a rapid failure, which
8 we get here, you release that energy all at once. And I'm
9 simply stating here that it's a violent release of energy and
10:40 10 that -- and that it could be dangerous to somebody, you know,
11 right over it.

12 Q. So this isn't a situation where a person might hear air
13 start to leak out of the tire or rim or something before it
14 failed?

10:40 15 A. No, this would just be a pop and it's done.

16 Q. Okay. Did you endeavor to try and figure out how much
17 energy would be released?

18 A. I did not try to calculate that, no.

19 Q. Fair enough. Let's move on to D then.

10:40 20 THE COURT: what happened on your test failure? Did
21 the rim pop up and hit the inside of the box?

22 THE WITNESS: Oh, yes, yes. It made a loud noise, and
23 it did smash inside the box, yes.

24 BY MR. CHAMBERS:

10:40 25 Q. And just to be clear, you put this -- it was a metal

1 container?

2 A. Yeah, I put it inside of a steel box.

3 Q. And that's for safety purposes?

4 A. Absolutely.

10:40 5 Q. So that none of you or your other cohorts could be
6 injured --

7 A. Exactly.

8 Q. -- during testing?

9 A. Yes, exactly.

10:41 10 Q. All right. Number D?

11 A. So D we're simply talking about the regulation of pressure
12 here, and it's my opinion that if this pressure had been
13 regulated between the compressor and the tire-filling station,
14 then this accident could not have happened. If it had been

10:41 15 regulated to any reasonable pressure -- one of the references
16 we used for passenger vehicles was 40 PSI. If you want to play
17 it safe and use 80 PSI because you fill heavier vehicle tires
18 as well as mountain bikes, it would still guarantee you would
19 not get this failure. This failure cannot occur at those
10:41 20 pressures. I guess you go as high as a hundred, but I think
21 that if it is regulated reasonably, you could have prevented
22 this event entirely.

23 Q. You said a moment ago that this could not have occurred.
24 Why not?

10:41 25 A. Because we know that this failure occurred due to an

1 overpressure of the system, of the tire wheel system. And that
2 overpressure really requires something in excess of a hundred
3 PSI, probably 120 to 140, maybe even more. So we know if we
4 can keep it well below that, then we're safe. No matter what,
10:42 5 you won't get this failure.

6 Q. So a regulator acts to basically set the top end of
7 whatever PSI would be going into whatever item you're filling?

8 A. Exactly.

9 Q. So if I have a regulator that's set to 80 PSI, there's no
10:42 10 way I get more than 80 PSI into that tire?

11 A. That's correct.

12 Q. And you mentioned a moment ago mountain bike tires, which I
13 think you said were 75 or 65?

14 A. Yeah, 65, give or take.

10:42 15 Q. Was that the highest PSI value that you saw in the record
16 about stuff that was filled at this particular filling station?

17 A. Well, I don't know that anybody ever referenced the 65 PSI
18 in the record, but it is the tire -- of the devices and tires
19 that were referenced as being filled, that would be the highest
10:43 20 one I saw.

21 MR. LASKE: Objection, Your Honor. There's no
22 foundation. He hasn't even mentioned a single witness' name
23 whoever said anything about bike tires, and I'm not aware of
24 any through any deposition where anyone said a bike tire was
10:43 25 ever filled up using that station.

1 THE COURT: You made reference. The question presumed
2 that there was some record that you'd reviewed.

3 THE WITNESS: I can look at my notes if you like, but
4 if you wanted to disregard bicycle tires and mountain bike
10:43 5 tires, the pressure would be even lower. So by including them,
6 it's being conservative.

7 THE COURT: what's your basis for knowledge? How do
8 you know what was -- what tires or what inflation pressures
9 were commonly used at that filling area?

10:43 10 THE WITNESS: If you like, I can look at my notes for
11 a moment and try to find where I'm referencing if you like.

12 MR. LASKE: Sure, and the government will concede it
13 was used for ATV and vehicle tires, but what we're questioning
14 is we haven't heard any evidence from bike tires.

10:43 15 BY MR. CHAMBERS:

16 Q. Let me -- I'll rephrase the question. Let me ask you a
17 different question.

18 What was the maximum PSI that you saw in the record that
19 this filling station was used to inflate irrespective of what
10:44 20 kind of tire it was?

21 A. I don't think that anybody documented what it should have
22 been. Right. They only documented that well, it was probably
23 about 175 being fed into it, which was way higher than any tire
24 you pick.

10:44 25 THE COURT: Counsel referred to a record. Did you

1 have a record of what tires were being filled or what the
2 inflater was being used for?

3 THE WITNESS: There is deposition testimony describing
4 what the device is used for, and that's what I'm referring to.

10:44 5 If you like, I can try to dig --

6 THE COURT: This is anecdotal from witnesses?

7 THE WITNESS: Yes.

8 THE COURT: Not a record per se?

9 THE WITNESS: Correct. I don't think they ever kept
10:44 10 track of those kinds of records.

11 THE COURT: Okay. Go ahead.

12 BY MR. CHAMBERS:

13 Q. In fact, in addition to witness testimony, you've reviewed
14 defense expert witness Schroeder's report?

10:44 15 A. Yes.

16 Q. And you recall where he referenced the different PSIs of
17 different sorts of tires that were filled out there?

18 A. You know, I do recall that happening. I don't recall the
19 numbers, but I do recall he did that.

10:45 20 Q. But fair to say, had you had a regulator that was set to 80
21 or even a hundred PSI, this incident never happens?

22 A. That's absolutely true.

23 Q. Okay. Let's go to your next one, which is E on page 5.

24 A. So E is related to the regulator again, and all I'm saying
10:45 25 here is that the type of regulator that I would use in my

1 facility to perform this would cost in the neighborhood of 25
2 to 50 dollars, and that's actually a fairly high end regulator.
3 You can get one quite a bit cheaper if you really wanted to,
4 but, really, the device that I'm recommending should have been
10:45 5 used in this place, I would say, would cost between 25 and \$50.
6 That's all it says.

7 THE COURT: Can you -- maybe it's self-evident. I'm
8 assuming that the air traveled from the inflation devices, the
9 pressure devices underground in some type of pipe, and then
10:46 10 came up at the area where there was a -- connected to the hose
11 device?

12 THE WITNESS: I believe this was all aboveground from
13 the compressor to this location.

14 THE COURT: Okay. In the pictures, I didn't see any
10:46 15 piping, but steel piping from the devices to the area where the
16 hose was?

17 THE WITNESS: Yeah, you know, my recollection is that
18 there's steel piping aboveground that leaves the compressor,
19 goes through a building up, I believe, near the ceiling of the
10:46 20 building, comes out of the building, and I just -- I don't
21 recall if that last 20 feet -- whether it ducked under and came
22 back up or whether it came up along the fence or the roof, the
23 overhang. I'm not -- that's what I don't recall, whether that
24 last 20 feet was above or below ground. You could have
10:46 25 regulated it right where it came out of the ground. That would

1 be the easiest place to do it. Or you could have regulated it
2 back at the building as well because it's only a single line
3 going to a single location.

10:47 4 THE COURT: Okay. So these inflaters, the Ingersoll
5 and the other one, the Ingersoll was dedicated only to this
6 station, it didn't have, for example, a device that would allow
7 it to flow to other locations.

8 THE WITNESS: No, so the compressor, the big
9 compressor fed the whole facility.

10:47 10 THE COURT: Okay.

11 THE WITNESS: well beyond this one location. One of
12 the pipes that came out of that manifold went to this location.
13 You would only regulate it on that one pipe. You wouldn't
14 regulate the whole thing down.

10:47 15 THE COURT: where would one expect a regulator to be,
16 closer to the manifold or closer to the end? I know you said
17 they could have put one at the end.

18 THE WITNESS: Typically they're put closer to the end.

19 THE COURT: Okay. Go ahead.

10:47 20 BY MR. CHAMBERS:

21 Q. I think we were still working on E, and I just want to
22 point out here and make sure that I'm clear, they were -- and
23 you saw regulators in use at other places at the border patrol
24 facility?

10:47 25 A. I saw one regulator in use in the building that the piping

1 ran through, and, in fact, it branched off of the same piping.
2 And then we know of a few others from the deposition testimony
3 of the border patrol personnel.

10:48 4 Q. And, again, just so I'm clear, to Your Honor's point,
5 they're -- coming from these compressors, there are multiple
6 hard lines, so to speak, that feed all sorts of end uses. Is
7 that right?

8 A. That's correct.

10:48 9 Q. And that's what we talked about earlier with the vehicle
10 lifts and pneumatic tools and so on?

11 A. Correct, yeah, the line branches out in many ways.

12 THE COURT: The regulator you saw is the one that you
13 opined was -- you believe was probably for pneumatic tools?

14 THE WITNESS: Yes.

10:48 15 THE COURT: That was the one that was set at what, a
16 hundred?

17 THE WITNESS: Just under, yes.

18 THE COURT: All right.

19 BY MR. CHAMBERS:

10:48 20 Q. And then the 25 to 50, how did you get to that number? I
21 know you said you could find it more cheaply than that.

22 A. I think at this time I looked at Grainer's website.

23 Grainger is an industrial supplier. I know that in the past
24 I've seen regulators for much, much cheaper. If you look at

10:49 25 them say, for example, on Amazon where you can get lots of

1 stuff made cheaply. I know that you can get them for quite a
2 bit cheaper, but I didn't bother recording those because I
3 wouldn't have used one of those. I would have used one of the
4 higher-quality ones.

10:49 5 Q. What's the installation process like for putting a
6 regulator on a line?

7 A. Well, you simply screw it onto the end of the line, and
8 then you screw the next piece into it. It's a two-screw
9 connections, you know, threads. It takes, I don't know, a
10:49 10 minute.

11 Q. So it's a fairly easy and inexpensive fix?

12 A. Yes.

13 Q. All right. Let's move on to F, which I think we've already
14 touched on, and basically what you're saying is it wasn't the
10:49 15 rubber portion of the tire that failed. Is that right?

16 A. Yeah, that's all we're saying there is that the rubber
17 portion of the tire itself didn't contribute at all to this.

18 Q. Okay. Why don't we take G and H further down on page 5
19 there together. And why don't you tell me what your opinion is
10:49 20 with respect to the gauge.

21 A. Sure. So G and H together basically say that it's my
22 opinion that the inflater at the time of the incident wasn't
23 functioning properly, meaning that it's my opinion that more
24 likely than not, the pressure-reading gauge on the inflater was
10:50 25 not working properly, and the reason I say that is because we

1 have a few pieces of evidence that tell us, in my opinion, that
2 this is the case.

3 The first piece of evidence we have is shown on the picture
4 on the left, and it shows that there is a heavy kink in the
10:50 5 high-pressure hose that is -- that's hanging from the reel, and
6 that kink basically tells us -- by the way, this is a picture
7 that was taken not by me, but by somebody else shortly after
8 the event is my understanding. And the kink tells us simply
9 that this hose has been -- has just seen very heavy use, right,
10:51 10 this was not babied, probably got run over by a vehicle or
11 something similar heavily loading because these hoses
12 themselves are very strong.

13 MR. LASKE: Objection. Calls for speculation. Ask
14 for it to be stricken.

10:51 15 THE COURT: Yeah, there's no foundation for it.
16 Sustained.

17 THE WITNESS: Okay.

18 THE COURT: At this point. Next question.

19 BY MR. CHAMBERS:

10:51 20 Q. Fair enough.

21 So you noticed that there was a kink in the hose.

22 A. There is, yes.

23 Q. And that was one basis for you determining and concluding
24 that the gauge was not functioning properly. What other bases
10:51 25 did you consider?

1 A. Another important feature is that there was an alternate
2 pressure-measuring device hanging right next to the hose reel
3 that's shown in the picture on the right. That's just a
4 handheld manual pressure gauge, the kind you would use on a
10:51 5 tire. It's a tire-pressure gauge. And what that tells me from
6 my experience is that, one, we know that an alternate measure
7 of pressure -- an alternate method of pressure measurement is
8 being provided at this location. So without a doubt, it's
9 being provided.

10:52 10 And, in my opinion, the reason you would provide that is
11 because the pressure gauge on the handheld device that fills it
12 isn't working because if it were working, you wouldn't need an
13 alternate method. So that's what this tells me.

14 But at the very least, it tells us that they did provide an
10:52 15 alternate method for measuring pressure, and they felt it was
16 important to do so, otherwise they wouldn't have done it.

17 Q. Any other bases as to why you feel that the gauge wasn't
18 functioning correctly?

19 A. Yes, so we also know from the deposition testimony of the
10:52 20 border patrol personnel that this gauge had been repeatedly
21 replaced. And by "gauge," I mean the whole inflater assembly.
22 I believe it was replaced five times in five years, but I mean,
23 the testimony will speak for itself, but it's very clear it was
24 regularly replaced, and I believe he even described hard use as
10:52 25 the reason.

1 But clearly it was replaced on a regular basis. And you
2 wouldn't do that, in my opinion, unless it needed to be
3 replaced, unless there was something wrong with it.

4 So when you put all of these pieces together -- I guess
10:53 5 there's actually two more things that I would add to this
6 collection. One is that nobody ever tested whether or not the
7 gauge on this inflater worked after the event. All they did
8 was put air through the valve and say hey, air still goes
9 through, it must be okay, but nobody actually connected it to
10:53 10 anything and determined whether or not the pressure gauge
11 worked.

12 Also, we know for a fact that this piece of evidence was
13 discarded for whatever reason. It was thrown away or lost, and
14 there's no way for anybody to prove one way or another whether
10:53 15 that pressure gauge on that device worked.

16 So ideally, I mean, in a perfect world, the evidence, which
17 was saved for an extended period of time, if it had been saved
18 an additional amount of time, we could have all looked at it
19 and tested it and determined whether or not the
10:54 20 pressure-reading device was working, but there's no evidence
21 that it was.

22 And we have a lot of these pieces of evidence that indicate
23 that it could not have been working, and because we have no
24 evidence that it was working, but we have numerous pieces that
10:54 25 suggest that it was not, in my opinion, it was likely that it

1 was not.

2 Q. All right. And you referenced there some testing -- or I
3 forgot how you put it, putting air through the valve. What are
4 you talking about?

10:54 5 A. Yeah, so there was a reference in one of the depositions
6 that referred to after the event happening, and I don't know if
7 it was a day or a week later, but they hooked up the inflater
8 to the compressed air and actuated the valve, and I believe
9 they described the pressure gauge as moving or jumping and the
10:55 10 air passing through, but that's all they did. They didn't try
11 to determine whether or not that gauge was reading anything
12 accurate or reasonable. They simply plugged it in and pushed
13 the valve.

14 Q. So you're saying somebody came out and -- you know, maybe
10:55 15 I'm exaggerating, but kind of squirted air up into the air?

16 A. That's my understanding.

17 Q. Okay. And you're saying that wouldn't be an accurate way
18 to test whether or not the gauge was functioning?

19 A. No, you cannot test the way the gauge is functioning by
10:55 20 doing that.

21 Q. Why not?

22 A. Because you need to have the device connected to a closed
23 volume, if you will, so you can back pressure up to the gauge,
24 and just by spraying it into the air, all you're doing is
10:55 25 getting a dynamic flip of the gauge at most. It doesn't tell

1 you anything about whether it's reading a good number or not.

2 Q. So what you're saying is that might say the valve is
3 working and air is being released, but it's not going to tell
4 you whether or not the gauge is functioning?

10:55 5 A. That's correct.

6 Q. All right. Anything more about G or H?

7 A. No, I think we've covered it.

8 Q. All right. Let's finish up with I.

9 A. So I is basically a very simple statement that this
10:56 10 assembly did not meet the recommendations from the state
11 regulations. So I'm not saying that it had to have met those
12 legally, but I am saying that it clearly did not meet those.

13 There are two ways you can design the inflater station to
14 meet that. You could use a clip-on with a two-foot hose or you
10:56 15 can use a regulated pressure source. And neither one was
16 chosen to be used here, and that's all that says there is that
17 this setup that was done there didn't meet what those
18 recommendations were, and had those recommendations been met,
19 in my opinion, this wouldn't have happened because you could
10:56 20 have regulated to a safe pressure.

21 THE COURT: How would the clip-on have made any
22 difference?

23 THE WITNESS: Well, if you were to use a clip-on and
24 then remotely operate the valve, then your body won't be
10:56 25 sitting basically immediately adjacent to the assembly.

1 THE COURT: I thought the clip-on was only two feet?

2 THE WITNESS: Well, two feet is that far, so --

3 THE COURT: wouldn't you still be above it if you're
4 trying to inflate a wheelbarrow tire that's off of the
10:57 5 wheelbarrow?

6 THE WITNESS: I guess you could be, but I don't think
7 you would be, but you could be.

8 THE COURT: I mean, I understand the opinion about
9 unregulated air pressure coming through. I'm not so sure I see
10:57 10 that there's any relationship between the clip-on device not
11 being used.

12 THE WITNESS: Well, it's my opinion -- I actually
13 agree with you. When you read the report and you look at what
14 I said in my deposition, it's my opinion that the regulator is
10:57 15 really the way to go. That's what I would have done. That's
16 the safe way to operate it.

17 However, had a clip-on with a two-foot hose have been used,
18 in my opinion, it's certainly much less likely that this would
19 have occurred, although, like you said, it is possible to hang
10:57 20 it straight under you.

21 THE COURT: I mean, do you have any idea of where or
22 how Agent Moore was positioned vis-a-vis the tire at the time
23 that the wheel exploded?

24 THE WITNESS: Only that he had to have been using his
10:58 25 hand to hold it on, but beyond that, I don't have any opinions.

1 THE COURT: There wasn't a table out there or
2 something to set it on. I mean, presumably it was on the
3 ground and --

4 THE WITNESS: That is my understanding.

10:58 5 THE COURT: Okay. Anything else of this gentleman?

6 MR. CHAMBERS: I've got just a couple more,
7 Your Honor.

8 BY MR. CHAMBERS:

9 Q. Two final questions or series of questions, I suppose.

10:58 10 Did you happen to take a look at Mr. Moore's responsibility
11 for this in your evaluation of everything?

12 A. I did.

13 Q. And did you form any opinions as to whether or not you felt
14 Mr. Moore was responsible for what happened?

10:58 15 A. I did form opinions on that.

16 Q. Why don't you tell us what those are.

17 A. It's my opinion that a layperson who was filling a tire and
18 is relying on a pressure gauge that is most likely not
19 functioning properly may not be aware of the dangers of
10:58 20 continually applying the pressure and inflating the tire more
21 and more, and so, in my opinion, a layperson wouldn't
22 necessarily be aware of the dangers involved with that.

23 Q. And do you have any knowledge one way or the other as to
24 whether Mr. Moore was experienced in filling small-volume tires
10:59 25 like wheelbarrow tires?

1 A. It's my understanding that that wasn't the bulk of his
2 tire-filling experience, yeah.

3 Q. And in terms of other cues aside from the gauge that might
4 have been available to Mr. Moore, do you have any opinions
10:59 5 about those?

6 A. Well, the -- it's not a leaking, hissing air sound as it's
7 filling, which that doesn't really tell you that it's about to
8 break because once it pops, it makes the noise, it's done, so
9 there's really no warning there. The tire does expand as you
10:59 10 fill it. And that is something that may be noticed by a person
11 filling the tire. But as a layperson, in my opinion, simply
12 seeing a tire expand doesn't necessarily mean that you would
13 expect it to explode.

14 You know, a good example is a lot of these modern mountain
11:00 15 bike tires are quite, you know, bulbous, if you will, and
16 that's just normal. And so I wouldn't say that just the
17 ballooning of the tire by itself would necessarily indicate to
18 a layperson that there is a danger involved.

19 Q. All right. And you had an opportunity to inspect the
11:00 20 actual tire that was involved, correct?

21 A. I did.

22 Q. And did you see any markings on the tire sidewall?

23 A. There were some markings, yes.

24 Q. And one of those markings was a warning of sorts. Is that
11:00 25 right?

1 A. That's correct.

2 MR. CHAMBERS: Can I please have Exhibit 271, page 2?

3 BY MR. CHAMBERS:

4 Q. Is this the warning -- I know it's kind of hard to read
11:01 5 there. It's scrubbed off and whatnot, but is this the warning
6 that you saw on the side of the tire that Mr. Moore was
7 filling?

8 A. Yes.

9 Q. And what does this mean to you?

11:01 10 A. It means that the manufacturer of the tire is warning that
11 tire inflation can be dangerous and should only be done by
12 trained --

13 MR. LASKE: Objection, Your Honor. Has the witness
14 been qualified to offer any opinion regarding warnings?

11:01 15 THE COURT: I think he's -- yeah, the way it was
16 phrased is what does it mean. You can have him read what it
17 says, and, you know, it's for the trier of fact ultimately to
18 glean what the meaning is.

19 So with that in mind, what -- what did you read there?
11:01 20 What did you see on the tire?

21 THE WITNESS: Basically what it says is that tire
22 changing or inflation can be dangerous and should be done by
23 trained personnel with, I believe, proper tools, although it's
24 difficult to read the last couple of words.

25

1 BY MR. CHAMBERS:

2 Q. And, in your opinion, was Mr. Moore a trained person?

3 A. No, I don't think anybody trained him for this.

4 Q. Okay. Did you read the manufacturer depositions about what
11:02 5 the warning's intended purpose was?

6 A. I did read their -- the deposition of the representative of
7 the manufacturer, and they said in that deposition that they
8 expected regular people to fill these tires. They didn't
9 expect, you know, a trained expert to be called out to fill the
11:02 10 wheelbarrow tire.

11 Q. And are you aware of this warning or something similar to
12 this being stamped on the sides of other tires?

13 A. I've seen similar -- I've seen warnings similar to this on
14 many, many tires.

11:02 15 MR. CHAMBERS: All right. I don't have anything
16 further. Thank you, Doctor.

17 THE COURT: We'll take our recess at this time until
18 11:15. We'll resume at 11:15.

19 My intention would be to finish with the doctor this
11:02 20 morning, however long that takes. If that takes us into the
21 noon hour, then so be it.

22 Okay. We're in recess.

23 (Recess.)

24 THE COURT: I apologize for starting a little bit
11:21 25 late. Cross-examination.

1 CROSS EXAMINATION

2 MR. LASKE: Thank you, Your Honor.

3 BY MR. LASKE:

4 Q. Good afternoon, sir.

11:21 5 A. Good afternoon.

6 Q. And you mentioned some of your background earlier and you
7 mentioned you worked on tires before, but have you ever
8 previously worked on a case involving a wheelbarrow tire?

9 A. Not that I recall.

11:22 10 Q. And you said earlier you conducted two tests with two
11 exemplar wheel assemblies; is that correct?

12 A. Yes.

13 Q. And you believed they were similar enough to conduct tests,
14 right?

11:22 15 A. Yes.

16 Q. And I believe you said in your deposition you want to be as
17 accurate as you can be in conducting your test, correct?

18 A. That's correct.

19 Q. You testified in deposition that we have evidence that the
11:22 20 line to the tire inflator was being supplied with 175 PSI,
21 isn't that correct?

22 A. I think that's approximately correct, yes.

23 Q. And at the time you conducted your site visit, that
24 actually was September 15th, 2015, isn't that correct?

11:22 25 A. That sounds right.

1 Q. That was over two years ago at this point?

2 A. I don't think it's been two years.

3 Q. Actually, that was over two years from the accident, which
4 was June 2013?

11:22 5 A. That would be correct.

6 Q. When you performed your tire failure testing for this case,
7 you did not use a calibrated pressure gauge, did you?

8 A. No. I actually calibrated the gauges digitally after the
9 fact.

11:23 10 Q. And during your first of the two tests, one of the pressure
11 gauges was as much as 20 percent off of being calibrated,
12 correct?

13 A. The raw data was, but the corrected data was accurate.

14 Q. But the tool you were using actually was over 20 percent
11:23 15 off?

16 A. No. The tool was reading values that were about 20 percent
17 off, but they were easy to correct for.

18 Q. But the tool was misreading so you had to manually correct
19 it?

11:23 20 A. It was done digitally actually on a computer.

21 Q. And between tests number one and number two you had to
22 replace one of the pressure gauges because, in your own words,
23 it was less accurate and required a bigger correction?

24 A. That's true.

11:23 25 Q. You know that the proper digital pressure data

1 acquisition -- you know what a proper digital data acquisition
2 system is, correct?

3 A. Well, you'll have to define proper, but I know what a
4 digital data acquisition system is.

11:24 5 Q. And in the past you have used such a data acquisition
6 system?

7 A. I have used those acquisition systems.

8 Q. But here you simply used a pair of mechanical pressure
9 gauges which you videotaped and later read the pressure off of;
11:24 10 is that correct?

11 A. That's correct.

12 Q. You did not document the manufacturer of the air
13 compressor, did you, that you used for the testing?

14 A. That's correct.

11:24 15 Q. And, in fact, at the deposition when I asked you the name
16 of the manufacturer you didn't know?

17 A. That's also correct.

18 Q. You didn't take any photographs of the air compressor you
19 used during your testing to produce with your expert report,
11:24 20 did you?

21 A. That's correct.

22 Q. And you did not know the cut in or cut out pressure of the
23 compressor used during your testing?

24 A. I believe that I said I used 165 PSI for my testing, and as
11:24 25 you can see in the video the inlet pressure never reduced

1 significantly to the point where it would have to cut in but,
2 no, I didn't record the cut in and cut out pressures.

3 Q. So you're saying the cut out pressure was 165?

4 A. No, I'm saying that that was the approximate test pressure.

11:25 5 The test pressure was recorded in the analog gauges and so the
6 cut in and cut out pressures really don't matter. What matters
7 is the pressure being inlet into the test.

8 Q. Which was 165?

9 A. Approximately. That's my recollection at least.

11:25 10 Q. And you didn't know the volume of the tank of the
11 compressor you used during your testing, did you?

12 A. No, I don't know the exact volume.

13 Q. And you didn't document the outlet pressure of the air
14 compressor you used during the testing -- or did you, is that
11:25 15 what the 165 is?

16 A. You know I don't know if I documented that or not. But
17 like I said that actually doesn't matter, what matters is the
18 inlet pressure into the test.

19 Q. You didn't take any photographs of your test setup to
11:25 20 produce with your report, did you?

21 A. I don't think so. I think it was documented only on the
22 video for the setup.

23 Q. And you actually didn't use a tire inflator in any part of
24 your test setup?

11:26 25 A. No, I used something that I could affix to the tire to

1 guarantee that it wouldn't separate because I wasn't holding on
2 to it by my own hands.

3 Q. And the other expert in the case, Mr. Deyerl, figured a way
4 to use the tire inflator?

11:26 5 A. I believe he actually modified a tire inflator to make it
6 work, that's my recollection, but he's certainly welcome to use
7 one.

8 Q. But for your test you didn't use one?

9 A. That's correct.

11:26 10 Q. And your test setup did not allow you to record the
11 pressure at the time of failure only just before the tire
12 exploded, correct?

13 A. That's correct, yeah. So my pressures are actually
14 slightly conservative, that's correct.

11:26 15 Q. And for test number one you didn't take any photographs of
16 the first wheel you pressure-tested correct?

17 A. I don't think I did.

18 Q. How long did it take for the tire to fail in test number
19 one?

11:26 20 A. You know, I don't recall. I believe it was a little under
21 a minute, but I don't recall the number.

22 Q. Isn't it true that with your report you produced some
23 information on a flash drive, is that correct?

24 A. I did.

11:27 25 Q. And one of those things was a -- an Excel spreadsheet that

1 I think had the title, more wheelbarrow tire testing, had some
2 figures in it?

3 A. That sounds correct.

4 Q. And you -- let me show you on the document camera. This
11:27 5 would be from Exhibit 390, but it didn't have a page number,
6 it's just the flash drive.

7 Do you recognize that information, sir?

8 A. Yes, that appears to be from the spreadsheet or at least a
9 portion of it.

11:27 10 Q. And, sorry, in the far left column it says fill time, what
11 does fill time mean?

12 A. That's the approximate elapsed time of filling.

13 Q. So that's the amount of time where air is being put into
14 the tire?

11:28 15 A. Approximately, yes.

16 Q. And action, we see fill and stop, can you explain to us
17 what that means?

18 A. Yes. So the test was run by opening the valve and filling
19 and then closing the valve and stopping the fill to get the
11:28 20 pressure reading.

21 Q. And then the time in seconds on the third column to the
22 left, that's -- what is that showing us?

23 A. Well, that's just sort of calendar time, if you will. Not
24 the amount of time filling but just the amount of time
11:28 25 elapsing.

1 Q. Okay. So third column, amount of time elapsing, the first
2 column, fill time, that's the amount of time filling the actual
3 tire?

4 A. Yes.

11:28 5 Q. And so if I switch to this last page, I believe you
6 actually total it up and you have 56.65 seconds for the fill
7 time before it bursts?

8 A. Yes, that's what it looks like.

9 Q. And was that how long the first test took to fail?

11:28 10 A. In terms of fill time, that's approximately correct, yes.

11 Q. And for the second test, isn't it true that the videocamera
12 you used to document the second test ran out of batteries and
13 shut off?

14 A. That does sound familiar, yeah.

11:29 15 Q. So that's why in your report you didn't know exactly the
16 timing of your test, you said approximately a minute?

17 A. Correct, it was similar.

18 Q. So you basically estimated the time for the second one?

19 A. Oh yeah, no, these are all rough estimates. These weren't
11:29 20 intended to reconstruct the accident, so the approximation
21 there to me isn't important.

22 Q. And when you obtained the wheels, and we asked you at
23 deposition, you didn't remember where you actually acquired the
24 two wheel assemblies you used, did you?

11:29 25 A. That's correct.

1 Q. And you conducted six to 10 tests to inflate the tire to
2 approximately 30 PSIs, correct?

3 A. I don't recall the number, but that sounds reasonable.

4 Q. But you didn't document any of these tests with video or
11:29 5 photographs?

6 A. That's correct.

7 Q. And how long did it take you to inflate the tires to reach
8 30 PSIs in these tests?

9 A. I think it varied upon the inlet pressure from I think a
11:30 10 few seconds up to, I don't recall the high end, maybe 10
11 seconds, I don't recall.

12 Q. In your deposition you said four to 12 seconds?

13 A. That sounds reasonable.

14 Q. And despite the lack of any eyewitness accounts, you
11:30 15 believed that plaintiff would have applied pressure to the
16 subject tire in one continuous application?

17 A. I think that's a reasonable assumption. I don't know how
18 he applied it exactly, it could have been stop and go.

19 Q. During your testing, though, you did apply it stop and go
11:30 20 at stages?

21 A. Oh, yes, yeah. No, I wasn't trying to replicate what he
22 did.

23 Q. And although you could have continuously applied the
24 pressure to the test wheel assemblies, you didn't do that?

11:30 25 A. No, no, I wasn't trying to do that.

1 Q. Regarding the subject, tire inflator gauge, you testified
2 that -- in deposition that you know the pressure gauge was not
3 working because of the evidence that's available to you,
4 correct?

11:31 5 A. Well, it's my opinion that more likely than not it wasn't
6 working based upon all of the evidence that we've already
7 talked about, yeah. Like I said, if it was actually retained,
8 we could test it, then we would really know whether it worked
9 or not but, unfortunately, it's gone.

11:31 10 THE COURT: That's not an expert opinion, you're just
11 making that as a logical deduction from the fact that there was
12 an alternative device to test pressure?

13 THE WITNESS: That's correct.

14 BY MR. LASKE:

11:31 15 Q. I think there's some binders behind you and we're going to
16 try to pull it up on the screen, but can I direct your
17 attention to Exhibit 141. And actually I think it's up on the
18 screen now.

19 A. Okay.

11:31 20 Q. So it might have been a slightly different photo, but you
21 can see in this photo I think there was a kink highlighted in a
22 different photograph, but you can see it on this one?

23 A. Yes, you can see it in this one as well.

24 Q. Okay. You can't say that the force which damaged the air
11:32 25 hose as seen in the photo caused any damage to the pressure

1 gauge, correct?

2 A. Oh, that's correct. The force that damaged the hose, all
3 you can say from this picture is that there was a significant
4 force applied to the hose, but I wouldn't say that that's
11:32 5 necessarily the same force that would have damaged the gauge.

6 Q. And you don't know if the gauge was damaged one way or the
7 other?

8 A. No, I can only deduce from the evidence provided, right, I
9 don't think anybody knows one way or the other.

11:32 10 Q. And you opined that the need for prior replacement of
11 different tire inflators is the evidence that the pressure
12 gauge on the subject tire inflator was nonfunctional?

13 A. That's one of the pieces of evidence that support my
14 opinion.

11:32 15 Q. But wouldn't replacement of a gauge that wasn't on at the
16 time of the accident be just evidence that the other gauges
17 weren't working not that the newer gauge was working or not?

18 A. I didn't follow that.

19 Q. So you're saying in the past there were four times or five
11:32 20 times it was replaced?

21 A. Yes.

22 Q. And those past tools obviously maybe they warranted
23 replacement, but the fifth newer tool, how do you know that
24 that warranted replacement?

11:32 25 A. I'm simply stating that we know that this same tool was

1 replaced approximately five times in five years, and,
2 therefore, we know that it requires replacement on a periodic
3 basis. That's the deduction that you make from that
4 information.

11:33 5 Q. But it's completely possible that tool had been recently
6 replaced?

7 A. It's possible if they actually documented that. I haven't
8 seen any evidence whatsoever that that was the case. I haven't
9 seen any evidence whatsoever that it actually did work.

11:33 10 THE COURT: What portion was replaced, the hose or the
11 fitting on the end of the hose, or both?

12 THE WITNESS: My understanding is that the fitting
13 that goes on the end of the hose that has the valve, the gauge,
14 and the connection to the tire, that's the part that was

11:33 15 replaced.

16 THE COURT: Not the hose itself?

17 THE WITNESS: Well, when I went out there, there was
18 no hose, so I don't know what happened to that.

19 THE COURT: The basis for your understanding is what?

11:33 20 THE WITNESS: For the understanding of what?

21 THE COURT: Of the ratio of replacement of some part
22 of this or all of it.

23 THE WITNESS: Oh, that was from deposition testimony.

24 THE COURT: Okay. And it was specific as to which

11:34 25 part had been replaced? It said the end as opposed to the

1 whole hose or?

2 THE WITNESS: I believe that they referred to the
3 inflator assembly in the deposition.

4 THE COURT: Okay, all right.

11:34 5 THE WITNESS: We can look at that if we need to.

6 BY MR. LASKE:

7 Q. But in the deposition there was actually no specific
8 evidence as to which part of it they needed to replace?

9 A. Well, when I read it I understood it to mean the inflator
11:34 10 assembly.

11 Q. Okay. But there was no specific part that they pointed out
12 as the reason for replacing the whole thing?

13 A. Oh, why, you mean the reason for why?

14 Q. Yeah, they replaced the whole thing, but they didn't say
11:34 15 this part didn't work, this part didn't work?

16 A. Yeah, I don't think there's any documentation for that.

17 Q. And you rely heavily on the manual gauge that's shown in
18 this photo that's circled, I think it's Exhibit 141 or 142?

19 A. That's certainly part of it, yes.

11:34 20 Q. And you testified that the only reason that a manual tire
21 gauge was present on a nearby fence was that the gauge in the
22 inflator was nonfunctional?

23 A. Right, that's my opinion, correct.

24 Q. But isn't it true that there may have been more convenient
11:35 25 ways to use the manual gauge so that they can evaluate whether

1 the tires needed to be inflated at all before rolling out the
2 entire hose and then trying to check it that way?

3 A. Well, I mean in that hypothetical I suppose it's possible.

4 Q. So someone might decide to do that rather than unravel this
11:35 5 long hose, find out their tires are fine and then have to ravel
6 it back up?

7 A. Well, when you look at this picture this hose already has
8 at least some distance already unravelled, and so I don't even
9 know how much unravelling would have to happen in that
11:35 10 hypothetical, maybe none.

11 Q. To reach --

12 THE COURT: Is the gauge on the hose -- will the gauge
13 on the hose function as counsel suggests? In other words,
14 assuming that the bubble gauge is working and before depressing
11:35 15 the hose to insert air into a tire, if you just plug it on to
16 the hose will the bubble show the current PSI of the tire?

17 THE WITNESS: It depends on the device, but it should
18 in general. In general, it should.

19 THE COURT: I mean, do we know about this one?

11:36 20 THE WITNESS: Well, no, they threw this one way away.
21 We have no idea what this particular design is.

22 THE COURT: Do you know from your experience with the
23 ends, what do they call the ends of these inflation devices --

24 THE WITNESS: I think they just --

11:36 25 THE COURT: -- gauge?

1 THE WITNESS: -- call it inflator tool.

2 THE COURT: Okay, inflator tool. Do you know from
3 your experience, do most of them work that way? In other words
4 if I roll into a gas station and I stick it on my tire, before
11:36 5 I depress anything to put air in, will it -- will it give me a
6 read of what the current air pressure is in the tire?

7 THE WITNESS: Yes, many of them will do that.

8 THE COURT: All right. Go ahead.

9 BY MR. LASKE:

11:36 10 Q. But isn't it common for people also before they go through
11 that process to take out a handheld gauge like this one and
12 check whether or not they even have to do any of that?

13 A. In my experience the only time I would use a handheld gauge
14 or I've known anybody to use a handheld gauge is when there is
11:36 15 no gauge on the inflation tool itself, which also used to be
16 very common. It used to be that a lot of the inflation devices
17 didn't have gauges and they were simply a valve with a hose.

18 And then, in which case I would use an external tool.

19 Q. So you've never seen anyone use a manual gauge to check
11:37 20 before deciding whether or not they even had to go through the
21 process of inflating any of their tires even if the inflator
22 had a gauge on it?

23 A. Not when they're right next to an inflator. I mean if I
24 was, say, at home and not at the gas station, I could possibly
11:37 25 use a tool. That would make sense.

1 Q. But even at gas stations people usually have to pay for the
2 machine, isn't it possible someone would check all four tires
3 before they go through that process?

4 THE WITNESS: I mean, well, anything is possible. I
11:37 5 haven't seen that.

6 BY MR. LASKE:

7 Q. You've never seen that?

8 A. Not when there's a functioning gauge right there. I
9 personally have used pressure gauges to check the pressure on
11:37 10 tires when I'm away from a filling station or filling device to
11 check it. I've done that many, many times.

12 Q. And you read several depositions but in this case I think
13 there were more than 10 border patrol agents deposed, none of
14 them said they had ever seen this before, this gauge on this
11:37 15 picture, on this fence. Are you aware of that?

16 A. I guess I don't recall those specifics, but that could be.

17 Q. And are you aware the lead garage mechanic who's
18 responsible for changing this out, the tire inflator and the
19 air hose, had never seen that gauge?

11:38 20 A. That could be, I don't recall.

21 Q. But you draw the presumption that someone put that up there
22 for the express purpose of checking tires because the gauge
23 wasn't working?

24 A. That to me is the most likely purpose for the gauge being
11:38 25 there, yes.

1 Q. Isn't that more of an assumption?

2 A. No, that's a deduction.

3 Q. Based on no witness saying they've ever seen that before?

4 A. Based upon my experience.

11:38 5 Q. If it turned out that the pressure gauge was actually
6 functional at the time of the accident, would you have any
7 criticisms of Mr. Moore's actions at that time?

8 A. If it was proved that it was functional, then I would say
9 he should track its function and that should dictate how far he
11:38 10 fills it.

11 Q. According to your presumption regarding the tire inflator
12 gauge being defective, it's your opinion that plaintiff did not
13 notice there was an issue with the tire inflator gauge while he
14 inflated the tire, correct?

11:39 15 A. Certainly he didn't recognize that it was not functioning
16 properly.

17 Q. And if the gauge, for example, was stuck on a number,
18 plaintiff according to your testing would have had-- would have
19 been able to observe this within 50 seconds, correct?

11:39 20 A. Yes, but it would depend what number it was stuck on in
21 that hypothetical. For example, if it was stuck on the number
22 22 then he may continue to fill and fill thinking well, I
23 haven't reached it yet. I haven't hit my target, in which case
24 he's clearly following the instruction of the pressure gauge.

11:39 25 Q. And if the gauge did not provide any reading, he'd be able

1 to observe that within 50 seconds, correct?

2 A. If it provided no reading at all, he probably could.

3 Q. And if the gauge was not otherwise working, he would at
4 least have 50 seconds to observe something?

11:39 5 A. Well, I think that's true regardless.

6 Q. As an engineer you conduct tests to determine if a tool
7 like a tire inflator works, correct?

8 A. You certainly can, yes.

9 Q. And isn't it true that you cannot scientifically determine
11:40 10 whether the tire inflator was malfunctioning because it's not
11 available to test?

12 A. Well, if it's not available to test then you can't test it.

13 I mean, that's by definition. What you can do is look at the
14 body of evidence and determine how much evidence supports
11:40 15 whether it was likely working or not. And in my opinion the
16 evidence in this case supports that it was not.

17 Q. But scientifically, which is the point of why you're on the
18 stand and not the attorneys arguing the point is scientifically
19 you couldn't test the tool though, right?

11:40 20 A. Well, no, by definition we can't test the tool because it's
21 been thrown away, I mean that's the definition.

22 Q. So you're looking at the evidence and trying to draw a
23 reasonable inference of what you believe it means?

24 A. A reasonable conclusion.

11:40 25 Q. You opine that the border patrol should have installed a

1 pressure regulator to prevent this accident?

2 A. Yes.

3 Q. And isn't it true that none of the border patrol employees
4 deposed in this case, including the plaintiff, had ever seen
11:41 5 anyone take a wheelbarrow tire to work?

6 A. I don't recall anybody saying they did see that.

7 Q. Isn't it true that no one ever said they saw that?

8 A. I'm not aware of anybody seeing that.

9 Q. And isn't it true that plaintiff had successfully filled
11:41 10 this tire once at a 7-Eleven?

11 A. The wheelbarrow tire?

12 Q. Yes.

13 A. That's possible. I don't recall specifically.

14 Q. So you didn't read his deposition?

11:41 15 A. I just don't recall whether he said that or not.

16 Q. Did you read his deposition?

17 A. I'd have to look at my notes. I believe that I did. But
18 I'll have to look at my notes.

19 Q. And isn't it true that plaintiff could have applied
11:41 20 pressure to this small volume tire for longer than a minute?

21 A. That seems very, very unlikely.

22 Q. Your tests were very close to a minute though, correct?

23 A. Yes, but my tests are not replicating the exact or a very,
24 you know, the tightest or closest representation of the wheel
11:42 25 and tire. I believe that your expert stated in his deposition

1 that he found what he believed to be a very good representation
2 of exactly what was there and it took him less than half a
3 minute to reach the explosive rupture of the rim.

11:42 4 Q. Isn't it true that plaintiff could have kept the wheel on
5 the wheelbarrow, turned the wheelbarrow upside down and
6 inflated the tire?

7 A. I'm sure that's true.

8 Q. You conducted your tests during daylight hours?

9 A. Yes.

11:42 10 Q. And in this -- in this case plaintiff actually inflated his
11 tire at night?

12 A. Yes.

13 Q. And I'd like to direct your attention to a 12-second
14 excerpt from the first test you conducted.

11:42 15 A. Okay.

16 Q. Which, for the record, is Exhibit 143C-1. And we're going
17 to run 12 seconds starting at 53 seconds to one minute and five
18 seconds.

19 But first I want to ask you a couple questions. Isn't
11:43 20 it true that test one was conducted by you filling the tire in
21 intervals as opposed to continuously filling the tire?

22 A. That's still true, yes.

23 Q. And as we discussed earlier, the data kind of showed fill
24 time versus actual just running time?

11:43 25 A. Correct.

1 Q. And the video that I'm showing you, based on the data,
2 which is Exhibit 3 to your deposition, but I think we
3 identified it earlier as part of Exhibit 390, so let's
4 see -- can I approach the witness, Your Honor?

11:43 5 THE COURT: Sure.

6 BY MR. LASKE:

7 Q. Let me know if you need more time looking at it.

8 A. No, go ahead.

9 Q. Okay. So according to your data on the Excel spreadsheet,
11:44 10 at about 53 seconds on the video you've actually filled the
11 tire with approximately 32 seconds of air, correct?

12 A. Yes, that's to approximately, what, about 122 PSI, yes.

13 Q. Okay. And according to the 32 seconds of fill time, isn't
14 it closer to 101 PSIs?

11:44 15 A. Why are you saying that?

16 Q. Well, what do you have it as?

17 A. It says 122 on the spreadsheet I'm looking at.

18 MR. LASKE: Can I approach, Your Honor, for a second?

19 THE COURT: Yeah, all counsel may approach without
11:44 20 asking permission.

21 THE WITNESS: Oh, you're right. I'm sorry, you are
22 correct. No, no, you're right it is 101, that is correct. I
23 was -- I was looking at the other column, yes.

24 BY MR. LASKE:

11:44 25 Q. I deduced that from filling out -- looking at your

1 information and I realized that your test shows it exploding at
2 I think almost 137 PSIs, so I kind of looked at that column.

3 A. Yes, that's correct. And that's the correct deduction.

4 Q. And that's the fifth or sixth column to the heading from
11:45 5 the left to right?

6 A. Sixth, yes.

7 Q. Okay. So at 32 seconds of fill time we're at 101 PSIs?

8 A. Yes.

9 Q. And we're obviously above the maximum suggested pressure?

11:45 10 A. Yes.

11 Q. According to your data sheet at one minute and five seconds
12 in the video we've actually filled the tire approximately 43
13 seconds?

14 A. Let's see, either 40 or 43 depending on whether we're at 65
11:45 15 or 69 seconds.

16 Q. And at around 43 seconds of fill time the tire pressure was
17 117.7 PSIs?

18 A. At 43 I have 123.5. At 40 I've got 117.7.

19 Q. Okay.

11:46 20 MR. LASKE: Now, Your Honor, I'd like to play the
21 12-second clip at this time.

22 THE COURT: Sure, you may.

23 (Video played.)

24 BY MR. LASKE:

11:46 25 Q. And in this clip that stops at 43 seconds of fill time or

1 approximately 43 seconds of fill time which is about 13.65
2 seconds before it explodes, we already see some warning signs
3 that the tire will explode if given more air, correct?

4 A. No, what we see is the tire expanding, but that doesn't
11:46 5 tell a layperson that it's going to explode. There's no
6 implication there at all. I mean as an engineer I can see
7 where this may be going, but I wouldn't expect a layperson to
8 know that.

9 Q. But you admit we see the tire expand?

11:47 10 A. The tire is expanding.

11 Q. And you admit at approximately one minute or at least by
12 the time we stop this clip the wheel in the center starts
13 pushing against the tire? And we can play the clip again if
14 you want.

11:47 15 A. The wheel -- well, the tire and the wheel are pushing
16 against each other the entire time.

17 Q. But it becomes more pronounced?

18 A. Well, there's certainly expansion, right? That's what
19 you're referring to.

11:47 20 Q. There's a gap when we started the clip and now there's no
21 more gap between the tire and the wheel?

22 A. Go ahead and play it again if you like.

23 Q. We'll play it again.

24 (Video played.)

11:47 25 THE WITNESS: No, the shadow is still present. I

1 wouldn't say that that gap changes, I would say that the tire
2 is expanding.

3 BY MR. LASKE:

4 Q. At one minute your data shows that it's a little under 40
11:48 5 seconds of fill time, correct?

6 A. Yes.

7 Q. And at a little under 40 seconds of fill time the data
8 shows the pressure is around 113.5 PSIs?

9 A. Yes.

11:48 10 Q. And isn't it true that at one minute three seconds into the
11 video or at least by one minute five seconds in the video the
12 stem orientation changes?

13 A. The whole orientation of the tire changes as it's coming up
14 on the tire. I don't see a stem orientation change. If you'd
11:48 15 like to play it again where you think you're showing that I can
16 have a look.

17 Q. Sure, it's around one minute three seconds, it goes -- it
18 stiffens up.

19 A. No, that's the entire system is moving. So what you're
11:48 20 looking at here is as the tire is expanding, it's actually
21 pushing up and tilting the whole assembly, which is causing
22 that hose to move, but the relative position of the stem in the
23 wheel to me does not appear to change, at least in the example
24 you're showing here.

11:48 25 Q. So -- but the hose is moving?

1 A. Yes, because the whole assembly is moving up, right. The
2 whole tire and wheel assembly is moving as you expand the tire.

3 Q. And that would have been the case before the tire that Ryan
4 Moore was filling exploded?

11:49 5 MR. CHAMBERS: Objection, calls for speculation.

6 THE COURT: No, it's within the scope of the opinions
7 he's offered. Overruled.

8 THE WITNESS: Yes, I believe that the tire that
9 Mr. Moore was filling would also expand.

11:49 10 BY MR. LASKE:

11 Q. And if we watch the video to the end, in your first test
12 the tire exploded at approximately 56.65 seconds?

13 A. Yes.

14 Q. And the data from test one shows the tire exploded at 136.9
11:49 15 PSIs?

16 A. Yes.

17 THE COURT: What was the first figure you gave, 56?

18 MR. LASKE: 56.65 seconds.

19 THE COURT: And that was fill time?

11:49 20 THE WITNESS: Yes.

21 THE COURT: Not actual time, because you were doing
22 this incrementally, on and off?

23 THE WITNESS: Yes.

24 THE COURT: And I'm sorry, the PSI at 56.65 was what?

11:49 25 MR. LASKE: 136.9 PSIs.

1 THE COURT: All right. Thank you.

2 MR. LASKE: I have nothing further, Your Honor.

3 THE COURT: Redirect.

4 REDIRECT EXAMINATION

11:50 5 BY MR. CHAMBERS:

6 Q. Dr. Rondinone, are you aware of any restrictions that were
7 placed on border patrol agents in terms of what sorts of tires
8 they could and could not fill at this particular station?

9 A. No, I'm not aware of any restrictions.

11:50 10 Q. Any evidence that you reviewed that said, hey guys, you can
11 fill anything you want, just don't fill a wheelbarrow tire?

12 A. No, I didn't see anything like that.

13 Q. And, again, just to make sure I'm clear, the testing that
14 you performed, you're not trying to recreate what Mr. Moore
11:50 15 would have seen that evening, correct?

16 A. No.

17 Q. All right. Thank you. Nothing further.

18 THE COURT: Any other questions?

19 MR. LASKE: Your Honor, actually we would move to
11:50 20 strike any opinions about warnings. This witness hasn't been
21 qualified or offered for warnings. He was just offered to do
22 testing.

23 THE COURT: You're talking about warnings by border
24 patrol to employees?

11:51 25 MR. LASKE: To employees not to use the equipment.

1 THE COURT: well, okay. I don't know that he's
2 offering opinions. He's asked -- I think he was asked in the
3 course of preparing opinions, I think the question was, did you
4 become aware of any restrictions and I think his answer is no.

11:51 5 Is that the -- was that the gist of the question that
6 you answered?

7 THE WITNESS: Yes, that's correct.

8 MR. LASKE: I understand, Your Honor.

9 THE COURT: He's not opining on that, I don't think.
11:51 10 okay.

11 Any reason why this gentleman can't be excused as a
12 witness at this time?

13 MR. LASKE: No, Your Honor, I don't have any more
14 questions.

11:51 15 MR. CHAMBERS: No, Your Honor.

16 THE COURT: Thank you. You may stand down. You're
17 excused. Do plaintiffs have a short witness now? Otherwise we
18 can recess and come back at 10 minutes to 1.

19 MR. CHAMBERS: I think it would make more sense to
11:51 20 break and start fresh at 1.

21 THE COURT: All right. well, 10 to 1.

22 MR. CHAMBERS: 10 to 1, excuse me. Tried to slip one
23 past you.

24 THE COURT: Yeah. 11:50 we'll reconvene and
11:51 25 plaintiffs will call their next witness -- I'm sorry, 11:50,

1 12:50, and plaintiffs may call their next witness at that time.

2 (whereupon, a recess was taken from 11:51 a.m. to 12:52 p.m.)

3 THE COURT: Next witness, Mr. Chambers.

4 MR. CHAMBERS: We'd like to call Dr. Kohani, please.

12:52 5 KAMBIZ KOHANI,

6 PLAINTIFF'S WITNESS, SWORN

7 THE CLERK: would you state and spell your full name
8 for the record.

9 THE WITNESS: Kambiz Kohani, K-A-M-B-I-Z-K-O-H-A-N-I.

12:52 10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. CHAMBERS:

13 Q. Good afternoon, sir.

14 A. Good afternoon.

12:52 15 Q. You are a dentist. Is that correct?

16 A. Yes.

17 Q. Any specialty?

18 A. No specialties, but I have a fellowship in implantology.

19 Q. What's implantology?

12:53 20 A. Implantology is the art and science of placing dental
21 implants.

22 Q. Okay. So you assist people with lost teeth effectively?

23 A. I've been placing implants since 1992, so being a general
24 dentist, my license allows me to place implants as long as we

12:53 25 have proper training and certification and whatnot. So I got

1 started in '92, and I've been placing implants since then, and
2 recently, a couple years ago, I got my fellowship.

3 Q. What did getting your fellowship entail?

4 A. Submitting probably close to 50 cases or so of implants
12:53 5 that you've done and taking an exam, a national exam, and
6 meeting with the board, and it's a pretty rigorous
7 qualification process.

8 Q. You've got roughly 25 years working with people's mouths
9 and doing implants. Is that right?

12:54 10 A. Yes, yes, I have.

11 Q. Tell me a little bit about your background with respect to
12 lecturing and teaching.

13 A. Okay. I've been director at UCLA Center For Aesthetic
14 Dentistry up until two years ago when I resigned, and I've been
12:54 15 teaching and educating doctors from all around the world in the
16 art of aesthetic dentistry and cosmetic dentistry, and recently
17 I started a lecturing symposium with Henry Schein, and we're
18 lecturing throughout the country and internationally 17 times
19 this year. It's a program that I started myself back in 2002.
12:54 20 I invented several products in my field. I've been pretty much
21 doing full-time general dentistry in my office about four days
22 a week and lecturing about maybe once or twice a month.

23 Q. And the lecturing you're doing, is that primarily in the
24 field of implantology or is it more broad than that?

12:54 25 A. It's mostly in the area of cosmetic dentistry and

1 orthodontics, and implantology has become a big part of what we
2 do as general dentists in our practices, creating spaces for
3 implants, moving teeth in the proper position so we don't have
4 to do certain things. So implantology has become probably one
12:55 5 of the biggest adjuncts to a general dentist's practice, so
6 probably within the last ten years or so.

7 Q. And how has implantology changed since when you started in
8 1992 to today?

9 A. Where do I start? First of all, all the procedures are
12:55 10 done using guides, surgical guides, which are manufactured and
11 made prior to the surgery. So with the advent of, you know,
12 making really inexpensive, high quality CT cone beams where
13 most offices now can afford to get one of those, you can pretty
14 much preplan the position of the implants, know where all the
12:55 15 vital structures are, avoid certain types of vital structures
16 if you don't need to, and be able to place your implants with
17 almost perfect accuracy, within a fraction of a millimeter to
18 where you need to go.

19 And most everything is now done digitized, so all the
12:56 20 planning and preplanning is done using a computer program, and
21 then the guides are made before even the patient's operated on.

22 Q. And I assume you take it upon yourself to sort of stay at
23 the forefront of all the advances in implant technology?

24 A. You have to, yeah. If you want to practice in today's
12:56 25 environment, you have to, you have to keep up with the

1 technology, yeah.

2 Q. And why is that important, to keep up with current
3 technology?

4 A. To be able to deliver better services to your clients and
12:56 5 avoid disaster and, you know, have a more productive, efficient
6 lifestyle, it really is. I mean, you -- normally it would take
7 us two weeks to two and a half weeks to have a crown made. I
8 basically just made three this morning before I went to the
9 trial, and it takes me about ten minutes to scan and mill a
12:56 10 crown right in my office. The patient can leave in the same
11 hour, doesn't have to come back for a second appointment to get
12 injected again and have temporary provisionals falling out of
13 their mouths.

14 So you're delivering a much better, higher quality of
12:57 15 precision actually dentistry in a more efficient time. So it's
16 the only way to practice.

17 Q. And you also have a private practice. Is that correct?

18 A. Yes, I do. Yeah, I've been in the same location for about
19 25 years in San Diego.

12:57 20 Q. And approximately how many patients do you see in a given
21 month?

22 A. I would say maybe eight to ten a day. I usually see one
23 patient on Fridays. I'd say, I don't know, maybe 30, 40 a
24 week.

12:57 25 Q. Is there a term of art that dentists use amongst each other

1 where you've got somebody who's actually working on somebody?

2 A. Wet-hand dentist, wet hand. Those are the ones, we're in
3 the trenches, we're in there doing the work, and we're
4 preaching what we do every day, and there's some guys that just
12:57 5 lecture. So they're more the -- in the background. They do
6 the scientific research, they go and talk about it. Most of
7 us, the ones in my group of colleagues that I work with, we
8 actually do it every day. We're in our office delivering these
9 types of things that we're talking about so --

12:58 10 Q. You consider yourself to be a wet-hand dentist?

11 A. I have to be. I can't imagine not doing dentistry. It's
12 what gets me up every morning.

13 Q. You're here testifying as an expert witness. How much of
14 your practice is devoted to doing that?

12:58 15 A. Less than 1 percent, if even that.

16 Q. So the vast majority of what you do, you're hands-on with
17 patients day in and day out?

18 A. That's probably 99 percent of what I do.

19 Q. We're here today obviously to talk about Ryan Moore. And I
12:58 20 understand he's a patient of yours?

21 A. Yes.

22 Q. So you're here both as an expert to testify in this case,
23 but you've also been treating Ryan. Is that right?

24 A. That's correct.

12:58 25 Q. Do you remember the first time that he came to see you?

1 A. Yes, I do.

2 Q. Can you tell me a little bit about what that was like
3 or --

4 A. Yeah. I received a phone call from a colleague of mine and
12:59 5 asked me if I would be willing to see Ryan for a consultation,
6 and they explained to me what happened and the extent of his
7 injuries, and they pretty much told me that he'd already had
8 the implants placed by another surgeon in town whom I know, and
9 they said it would be a pretty straightforward case of just
12:59 10 placing some crowns and whatnot, and, you know, would you be
11 willing to do this and help him out.

12 So I initially said let me meet him first. So I met with
13 him, and immediately I thought he was a great guy, and I said I
14 accepted -- I agreed to work on him and get him started.

12:59 15 So as soon as we took our initial diagnostic records, I
16 realized that it's not an easy, simple case. His case was very
17 complicated. He was missing quite a bit of tissue and not soft
18 tissue, hard tissue as well, and later on we found out that
19 this case is a lot more challenging because those implants were
12:59 20 all placed in different angles, in different positions, which
21 made it almost impossible for me to be able to restore his
22 mouth with individual crowns. So we had to devise a
23 substructure that I can explain to you if you want me to get to
24 that point through the photographs and the things that I've
01:00 25 done with the models. So it turned out to be a much more

1 challenging case than we anticipated, but yes, we decided to go
2 ahead and get him finished up.

3 Q. When Ryan first came to you, what did you understand his
4 injuries to be?

01:00 5 A. I knew that he was involved in an accident where something
6 had exploded in his face, a tire, that was placing air in the
7 tire, and I guess there was no way of regulating it, and it
8 exploded in his face and took out seven teeth on the bottom and
9 five on the top. It left him with paresthesia, numbness on the
01:00 10 left side of his face, and he'd lost a considerable amount of
11 bone and tissue on that side from the injury. He had fractured
12 the mandible on the right side. We had to place a few fixation
13 pins, and screws were still there when I first met him. He
14 also had a small perforation on the left mandible from the
01:01 15 impact, which was kind of left alone to heal on its own.

16 And so that was the extent of his injuries, and I was
17 really concerned about mostly about his lip because he had no
18 sensation or feeling, so I couldn't use -- we used a lot of
19 phonetics to try to determine where the teeth end up in the
01:01 20 patient's face and mouth. The length of your incisors really
21 play an important role in to saying the word F. So we try to
22 have patients say "fifty," "fifty-five," and counts, and use
23 that as a way of knowing where the incisal S should be. We use
24 the word S as knowing exactly how close the teeth -- Ryan was
01:01 25 missing all his front teeth, so there was no way for me to tell

1 where his teeth were and what angulation or inclination to
2 really put him in.

3 So those were all the challenges that had to overcome, and
4 we were able to end up with a pretty decent result.

01:01 5 Q. When Ryan first came to you, how would you describe his
6 case or condition?

7 A. Pretty severe. Pretty severe. Definitely not something
8 that I would let any of my residents handle.

9 Q. Was it among the worst you'd seen?

01:02 10 A. It was probably among the top three worst cases I've seen.
11 The other one was a gunshot wound, shotgun to the face, so that
12 one topped him.

13 Q. And do you recall when Ryan first came to see you
14 approximately?

01:02 15 A. I believe it was in March, April, March, of 2015. I don't
16 remember the exact date, but it was right in the springtime.

17 Q. It's been a couple years roughly?

18 A. A couple years, yeah.

19 Q. And since that time, have you treated him consistently over
01:02 20 the past roughly two years?

21 A. Yes, I have. He just recently came in for a checkup. I
22 can't remember, maybe a month or so ago.

23 Q. Okay. I've got some models here. I'd like, if you could,
24 to show us what the condition of Ryan's mouth was like when you
01:02 25 first saw him.

1 A. Please. May I also have those photographs?

2 Q. Sure.

3 A. That might help kind of tie these things together.

01:03 4 Q. Why don't we pull them up on the screen. Let's take a look
5 at Exhibit 69.

6 A. All right. So let's see. Do you have the photo that shows
7 those healing caps from the top view?

8 Q. Sure. Can I see Exhibit 76, page 1, please?

9 A. Do you remember all of that?

01:04 10 Q. I've got it memorized.

11 A. Okay. So the first time I saw Ryan, he walked into my
12 office looking like that.

13 Q. What are we looking at in Exhibit 76?

01:04 14 A. What you're looking at are seven implants that are placed
15 pretty much right on top of each other, and if you take a
16 look -- I don't know if I can point and show something.

17 Q. You can notate on that screen. Can you orient us? Are we
18 looking at the uppers or the bottom?

01:04 19 A. These are the lower jaw, the lower teeth, if you're looking
20 from the top view. So imagine if I'm standing over the patient
21 looking straight down.

22 So the one round circular thing that says "C/X" on it,
23 right in the center, if you take a look just slightly above it,
24 you see a white area. It looks like a white lesion. Okay.

01:04 25 And that is what really concerned me more than anything else,

1 and I'll tell you what that is.

2 That told me that Ryan, if you take a look at this model,
3 Your Honor, has absolutely no vestibule in his lower mouth,
4 meaning when you pull the lip down, you have teeth. There's a
01:05 5 ridge. There's a nice area that comes up. When he lost all
6 that bone, he has no ridge, and he has no vestibule, so his lip
7 is actually connected directly to his mandible and to the floor
8 of his mouth.

9 If you look at the picture, that white area is actually
01:05 10 where the lip -- when I don't pull the lip, when I'm not
11 retracting it, the lip is actually folding over that metal
12 healing cap, hence ripped a little gash through it, and that's
13 what he was complaining about, that I can't even hold my lip
14 because if I let my lip go, it's digging into this attachment,
01:05 15 and he broke my heart because those are one of the most painful
16 things you ever deal with as a dentist. When patients have
17 dentures and they have no vestibule, the edge of the denture
18 rips into the lip, and every time you move your lip, it's like
19 somebody is cutting a knife through your lip.

01:05 20 So one of the first things I decided to do, I told Ryan, I
21 said we need to take care of this right away because I can't
22 put any appliances, no prosthetics, nothing that's going to
23 interfere with your lips.

24 So we need to go back and recreate a vestibule.

01:06 25 So this model that I'm looking at here dated on 3-12-15 is

1 in March is when I first -- I believe when I first saw him, the
2 record was taken.

3 If you take a look, if I put his teeth together, and you
4 take a look at his mouth, you'll see that the entire front area
01:06 5 is missing, and he's got two teeth on this side that have
6 completely dropped down by several millimeters because there
7 was nothing opposing to stop those teeth from super erupting.

8 So that was going to create another major issue for me
9 because I have no room down here to put any teeth for him.

01:06 10 So --

11 Q. Let me just stop you for a moment and make sure I
12 understand.

13 So I think I counted that he was missing 12 teeth total
14 when you first saw him?

01:06 15 A. That's right, seven on the bottom, and five on the top.

16 Q. And it was your understanding that those were lost as a
17 result of the incident and intervening treatment?

18 A. That's right.

19 Q. And then in addition to that, he had no vestibule?

01:06 20 A. He has no ridge, no vestibule, and if you take a look those
21 implants, those are called healing caps. Those are what we put
22 on top of the implants after the implants are placed in so the
23 tissue starts to heal around it.

24 If you take a look at those, there is a lot of red tissue
01:07 25 right next to the implant. That's called mucosal tissue, and

1 what we need around implants are -- that little white tissue,
2 the band, is called keratinized tissue.

3 So what happened is the keratinized tissue was gone when he
4 lost those teeth, and the only other area in the mouth where we
01:07 5 know where keratinized tissue exists is on the palate.

6 So that was the only other area that we had to go and
7 borrow some to come back and graft around all these implants
8 just to give us a shot of being able to even put something in
9 there.

01:07 10 Q. Let me back you up for one second because I think we're
11 missing something important.

12 These implants that you're talking about, what is that, and
13 how does it work?

14 A. Okay. Pardon me. I should have explained that originally.

01:07 15 So the implants were titanium fixtures that are placed into
16 his jaw.

17 Q. How?

18 A. Basically drilled in there. We call that osteotomy. So we
19 basically start from a small drill, and we work our up to
01:08 20 whatever diameter that we're going to end up with. I believe
21 his implants were four millimeter in diameter. Most of them
22 were four millimeter. And the length of the implants is going
23 to be determined by how much bone you have from the top, and
24 also if there's a vital structure, like a nerve on the bottom,
01:08 25 so it's going to limit you to how long.

1 So obviously the wider, the longer implant, the better, and
2 if you can't put it in there, then you're compromising.

3 One of the reasons why I believe Ryan ended up with having
4 so many implants put in was because of the fact that they
01:08 5 weren't able to put longer implants in there for him.

6 Q. Can we go back briefly to Exhibit 69, please?

7 Do you recognize this?

8 A. Yes.

9 Q. What are we looking at?

01:08 10 A. We're looking at all those implants that I was talking
11 about.

12 Q. So the white things I'm looking at in the middle there,
13 those look like screws?

14 A. That's right. They're really screws. They're titanium
01:08 15 screws that we put in people's jaws.

16 Q. They're drilled into the jaw?

17 A. They're drilled into the jaw, and the bone is what keeps
18 them in place, and hopefully if the bone stays healthy and
19 there's enough blood supply, it maintains these. If it doesn't
01:09 20 and you start having problems and you start to lose bone, hence
21 you're going to lose the implant.

22 Q. So once the implants are screwed in and into the jaw,
23 drilled and screwed in, these healing caps that you're talking
24 about, what's the purpose of those?

01:09 25 A. The healing cap basically allows the tissue to heal because

1 those implants are submerged underneath the gum for a period of
2 four to six months. So that was all done by Dr. Berger's
3 office.

01:09 4 So then the second-stage surgery is when we go inside and
5 you remove the screws on top of the implants, and you place in
6 healing caps that now extend from the top of the implant
7 through the tissue.

8 Q. And were you the one who placed the healing caps?

01:09 9 A. The healing caps on the top were placed by me because those
10 implants were not exposed when he came to my office. They were
11 still submerged under the gum.

12 The lower implants had already been through the tissue, so
13 we didn't have to really place those healing caps in there.

01:10 14 We just replaced the ones that he had with new ones because
15 of the amount of plaque and buildup that he had accumulated
16 over the top of those.

17 Q. Let me make sure I understand how this works. You drill in
18 place the implants, and you leave them alone and let the tissue
19 grow back over the top of them?

01:10 20 A. That's right.

21 Q. And that's takes four to six months?

22 A. Four to six months, that's right.

23 Q. And then once that's completed, you go back in and take the
24 tissue out again?

01:10 25 A. Then you have to cut him open again and expose all those

1 implants and then put the healing caps and suture him back up.
2 So that's pretty much another surgery. And he's going to have
3 to wait a few weeks or maybe a couple of months for that to
4 heal.

01:10 5 Q. And can we go back to Exhibit 76, please?

6 So, again, these are the healing caps, so we're past the
7 implants, we're past the tissue growing over, we're past the
8 cutting into him, and now the healing caps have been placed?

9 A. That's right. When he presented to me, he'd already been
01:10 10 through the second stage with Dr. Berger's office, I believe,
11 and that's what he showed up in my office with.

12 THE COURT: Is it Joel Berger?

13 THE WITNESS: Yes.

14 BY MR. CHAMBERS:

01:11 15 Q. And the uppers were still not healing capped?

16 A. No, they were submerged, yeah, and I guess Ryan was
17 supposed to go back and have the second-stage healing cap
18 recovery done, but they decided since he's coming to me, if I
19 was willing to just take care of everything for him, and I did.

01:11 20 Q. Fair enough.

21 Is Exhibit 76 -- is this a photo that you took?

22 A. Yes.

23 Q. And it's a fair and accurate depiction of what we're
24 looking at there?

01:11 25 A. Yes.

1 Q. So it sounds to me like the first real procedure, hands-on
2 procedure, that you performed with Ryan would be to expose the
3 upper implants?

4 A. That's correct.

01:11 5 Q. Okay. And do you recall about when that was done?

6 A. I don't remember the date, but I want to say within a month
7 after I saw him.

8 Q. Okay. June 2015 sound about right?

9 A. Probably. Yeah, I don't really recall.

01:11 10 Q. Tell me what that procedure entailed.

11 A. The procedure, we basically numbed him up on the upper arch
12 and made an incision -- I can get detailed if you want. This
13 is called the crestal incision -- just to reflect the tissue
14 back, and he had a lot of scar tissue in there just from the
01:12 15 way everything had healed. So we were careful not to really
16 take any tissue away, so I reflected the tissue and pushed all
17 the keratinized tissue up around the implants to try to avoid
18 or minimize the second-stage grafting for him, and that was
19 successful, so we didn't need to do that. And placed the
01:12 20 healing caps in. And then my goal was just to try to get some
21 teeth in there, and I wanted this guy -- he'd been walking
22 around with no teeth for a long time, and I know it was
23 bothering him, so my goal was just to get something in there
24 and put some teeth in there for him. So we did some -- tried
01:12 25 to do some provisionals for him, and, unfortunately, it didn't

1 work out very well because of the vestibule problem we had on
2 the bottom. So the next big thing I told Ryan we have to do is
3 go see Dr. Machado and have him do the vestibuloplasty, which
4 is what I was explaining before.

01:12 5 Q. So before I rudely interrupted you.

6 A. No, you didn't.

7 Q. I'm also going to hand you a stack of photos, and I want to
8 run through the treatment chronology, but I think you're
9 probably better able to guide me through that than I would be.

01:12 10 A. Okay. So if I may, first let me explain. First let me
11 explain what happened with the vestibuloplasty procedure. I
12 was actually there in the office with Dr. Machado when he did
13 the procedure.

14 Q. This was in roughly September of 2015?

01:13 15 A. Yeah, I believe your memory is better than me.

16 Q. So placing these implants and going through this process
17 sounds like it's a relatively lengthy ordeal?

18 A. Usually start to finish would take about a year. Four to
19 six months healing. Lower arch, maybe four months, upper arch,
01:13 20 six months, and then in his situation, maybe a little bit more
21 because of the lack of tissue, things that he had around there.

22 Q. Okay.

23 A. Yeah, so if you look at -- I may have to refer to this
24 picture again, but if you look at this picture here.

01:13 25 Q. If there's a little pink sticker in the bottom, it should

1 give us a number, and I'll pull it up on everyone's screens.

2 A. I'm sorry. Again?

3 Q. There should be a little pink number in the corner of the
4 picture.

01:13 5 A. Pink number? Show me where that is. Is it 96?

6 Q. There you go.

7 A. Okay.

8 Q. Take a look at 96, please.

9 A. 96, please.

01:14 10 Okay. So if you take a look at this picture, we went in
11 there, and we made an incision right about here. You can see
12 where the attached gingiva is where the white gingiva is, and
13 the rest of that, where the lip is attached, you can see the
14 capillaries. That's called mucosal tissue. So made an
01:14 15 incision and basically cut him open from here and down to here
16 and reflected all that back and then went to the roof of his
17 mouth and took out two big pieces of tissue, one from the
18 right, one from the left. Those were the keratinized donor
19 site, and we brought those back, and we grafted those area over
01:14 20 the top of his ridge.

21 Q. And the purpose of this procedure is to build up tissue to
22 allow for implants?

23 A. To build up tissue and move the lip away from where the
24 prosthesis is going to be so it's not going to dig into his lip
01:14 25 and cause the nasty sore that he had before.

1 So, luckily, that procedure worked the first time. Usually
2 we have to do that at least a couple of times to get enough
3 height and width, but that worked out the first time. So that
4 turned out really nice.

01:15 5 And after that, it allowed me to move forward to the next
6 phase, which is to start to design the prosthesis for him, and
7 when you're ready for that, I'll show you that.

8 Q. Okay. Please.

9 A. Okay. So one of the things that made Ryan's case more
01:15 10 challenging was the fact that -- let's see where those are.
11 Okay. So one of the things that made his case very challenging
12 was the fact that those implants were all placed in not so
13 ideal positions.

14 So -- and I believe the reason for that -- Dr. Berger is a
01:16 15 good surgeon, and I have no doubt that he took every measure of
16 precaution to do what he really had to do, but those implants
17 were placed in -- one was placed more buckled than the other
18 one, so in order for me to come in and individually treat those
19 teeth, his teeth would be all over the place. One would be
01:16 20 more to the face, one would be slightly to the lingual.

21 So in order to avoid that, we decided to make him a
22 structure, a titanium structure, that fits over on top of the
23 implants, and so if you please look at -- this one doesn't have
24 a pink number in there, but do you remember what --

01:16 25 Q. No, I don't. Can we see Exhibit 105? Actually, sorry,

1 106. Let's go old-fashioned.

2 THE COURT: Tish, do you have to switch over?

3 MR. CHAMBERS: He's on it. I'll just put it on the
4 ELMO.

01:17 5 THE WITNESS: You might want to take this one too
6 because that's going to be the next thing I'm going to talk
7 about. I have two more pictures. I'm going to come to these
8 in a few minutes.

9 BY MR. CHAMBERS:

01:19 10 Q. There we go. We're looking at Exhibit 106, page 7.

11 A. Okay. So if you look at this picture, you'll see that on
12 the top, you'll see these gold cylinders that are sticking out
13 of his gum. Those were all custom gold abutments that we made
14 on the top, and we had to make those -- they're not all in the
01:19 15 same plane. They're all in different planes. So then what we
16 did was we designed -- we designed a bridge. You have a
17 picture that shows the upper bridge that slides over that.
18 It's like a -- no, that's the lower one. Sorry. It's the
19 other one. Just a ceramic -- there you go. Sorry, these
01:19 20 pictures don't really do justice, but when you take a look, now
21 that bridge, it's like a telescopic type of system, so it goes
22 over those abutments that we've designed, and it gets cemented
23 in there, right.

24 Q. So the gold posts that we saw in the last photo, this would
01:20 25 fit right over the top of those?

1 A. Exactly. Would you go back to the gold posts again? So if
2 you look at the gold posts, if you take a look right here,
3 there is a little access hole. Each one of them have an access
4 hole. There's a screw that goes through the access hole and
01:20 5 holds that abutment to the implant. Okay. So then the bridge
6 gets cemented over that so, and they're all connected together.

7 THE COURT: The screw comes in from behind?

8 THE WITNESS: No, in this situation, the screw is
9 going to be covered with the bridge. So you won't have access
01:20 10 to the screw until the bridge comes out. If I was going to
11 design this individually, the access hole would come out
12 through the face of the front teeth. So when he would smile,
13 you can see a round circle in the center of all of his teeth
14 where I would have to close it up with composite. Sometimes we
01:20 15 do that, but that doesn't look good because if he drinks any
16 coffee or wine, within a matter of a few months, it's going to
17 have a dark circle halo around it.

18 So what we decided to do was put the screws in on the
19 facial, put the abutments in, torque everything down, and then
01:21 20 cement a bridge over on top of those.

21 And initially I was going to use a temporary cement for one
22 reason only. It allows me to be able to remove the bridge and
23 go back inside and do whatever I need to do without damaging
24 it. So I have access. It's retrievable. And it's something
01:21 25 that I would be able to go back every once in a while, maybe

1 once a year. I told him, I said you need to -- he can't clean
2 that because those teeth, he has no access to them. They're
3 all covered with the bridge. So it's not like you and I having
4 a crown where we can floss around it and clean around it. That
01:21 5 implant is hidden with the substructure, and it's covered with
6 the bridge.

7 So I told him once a year or maybe once every year and a
8 half or so, depending on how well his hygiene is, he needs to
9 have that bridge removed and take the abutments off, clean
01:21 10 everything, and put it back in together again. It's not a big
11 thing, but that's just part of his regular, normal hygiene
12 protocol from now on in order to be able to get the most life
13 out of these implants.

14 BY MR. CHAMBERS:

01:21 15 Q. Is it typically your preference when you place implants to
16 do them one at a time?

17 A. Absolutely.

18 Q. So one implant would fit over one -- or excuse me,
19 one -- what do you call the white teeth?

01:22 20 A. The abutment.

21 Q. The abutment fit over each implant?

22 A. That's right. That's the idea is to restore him somewhat
23 to what he used to be before. Except those teeth are
24 not -- they don't have nerves or periodontal ligament. They're
01:22 25 dead titanium posts in there, but still if you restore them

1 independently, it's better because you can clean them better,
2 it functions better. If one of them breaks, you don't have to
3 replace the whole thing. And that's one of the hardest things.
4 I work with a team of ceramists not only from UCLA but from our
01:22 5 implants, the International Academy of Implantology. These
6 guys do nothing but restore implants. I brought four of them
7 together. He was in the office. Two showed up. The other two
8 we met before. And I said let's design this case in a way that
9 he can get the most out of this. And that was the best system
01:22 10 that we could come up with on the upper, and on the lower, the
11 picture that you have right there, this picture is actually the
12 lower teeth, and on the lower arch, I was able to design a
13 bridge. Can you please put this picture on for me, please?
14 Q. I don't have that one. What's the number at the bottom?
01:23 15 A. It doesn't have one. It's 106-002. So we had better luck
16 actually -- yeah, if you can show me the previous picture just
17 for one second again, the one you just covered up.
18 Q. These are all photos you took?
19 A. These are all pictures I took, yes.
01:23 20 When you look at that picture, that one is showing the
21 access to the screws right through the chewing surface of the
22 teeth. Okay. So that on the lower arch, it worked out nice
23 because I was able to put the access holes right through the
24 center of the teeth, and those are not an area that you can
01:23 25 normally see, and then I covered them up with a temporary

1 adhesive. And can you put the next picture, please?

2 And that's a picture of that bridge from the front, and you
3 see this whole area here is all in pink porcelain because he
4 doesn't have any tissue there. He has no bone there. He lost
01:24 5 all of that vertical height. So we had to restore that with
6 pink porcelain. So I made that instead of him going and having
7 another surgery done where this is usually what they do, they
8 take ribs and they take hip bone, and they add to bring up the
9 amount of ridge to where the rest of the teeth should be, so
01:24 10 the teeth that he has are going to be the proper size.

11 In his situation, his implants were put all the way to the
12 base of the mandible because that's the only bone he had
13 available.

14 So when you look at -- if you want to show the X-ray,
01:24 15 please, the one CT that I had -- I'm sorry, you know, I'm going
16 back and forth, but I'm trying to make sense of all this stuff.

17 THE COURT: That's all right. I'm following.

18 THE WITNESS: Perfect. So if I was going to draw a
19 line where the bone and the teeth used to be, they're right
01:24 20 here.

21 So if you take a look at his implants, the head of these
22 implants are down here, which means he's going to have teeth
23 that are going to be that long. And now you're getting into
24 this whole thing. It's called the crown to root ratio where
01:25 25 the amount of post that he has under the ground is much shorter

1 than the building that you're going to build on top of it.

2 So we had to go back and redesign this whole case and come
3 up with a way that he's able to function because that's -- he
4 doesn't have any feeling in that area, there's no nerve endings
01:25 5 in there anymore. So he doesn't really know how hard he's
6 biting his food.

7 So I wanted to make sure he's not going to keep breaking
8 it, so we designed -- can you go back to the bridge picture?
9 Thank you.

01:25 10 So we had to go back and design this entire structure right
11 here that's now held in place with those implants, and I
12 actually had to even bury a couple of them because there wasn't
13 enough space for me to engage those, so I think we buried one
14 of his implants, we said we can't use that, in order to be able
01:26 15 to come up with something like this.

16 BY MR. CHAMBERS:

17 Q. So Ryan's case sounds like it was fairly complex?

18 A. It was definitely something that -- yeah, you definitely
19 have to know what you're doing with this stuff, yeah. It's not
01:26 20 just replacing teeth. You have to put his bite back together,
21 and there was so many different variations and complications
22 that we had to go through, but, luckily, it all worked out.

23 Q. And I think you saw Ryan in December of 2015. You
24 mentioned a few minutes ago about -- I think you said super
01:26 25 erupted. Tell us a little bit about what you meant by that.

1 A. Well, the super eruption was if you go back to -- well, I
2 can actually show you the models here. This is probably the
3 best thing that explains. When Ryan came into my office back
4 in March of 2015, his upper left teeth, because they were
01:26 5 unopposed for a long time after the injury, had started to grow
6 down and erupt into the bottom space.

7 So my recommendation to him was to go ahead and remove
8 those teeth, but do not place any implants because he doesn't
9 need anymore implants. I didn't want him to go through more
01:27 10 treatment. There's no reason. He's got plenty of implants on
11 the other side that we can restore, and I decided to what's
12 called a cantilever.

13 So rather than putting implants in the place of those teeth
14 that were removed, I said just leave it alone, just graft it,
01:27 15 and then we'll basically design a fake -- couple of fake teeth
16 that are hanging on this big bridge on the other side and save
17 him from having more surgery and more work. And that's -- that
18 was the super eruption.

19 So that's one of the things that I did before we moved
01:27 20 forward with the restorative part of his face.

21 Q. And what teeth had to be extracted for super eruption?

22 A. It was number 10 and number 11. Number 12 I was able to
23 fix it, just with shaving it, recontouring it. We were able to
24 fit that one. We didn't have to touch it.

01:27 25 Q. Why couldn't you do the same thing for 10 and 11, just

1 shave them down?

2 A. No, because -- that's a good question. Because if you take
3 a look at where the reduction would have to go, you would be
4 halving the tooth. You'd have to take the nerve out, and then
01:28 5 you have to do a gum surgery to lift the tooth up. There's no
6 reason to do that. There's no rationale to do that.

7 Q. So it was easier just to remove those two teeth that had
8 grown down?

9 A. The only other option that we considered was orthodontics
01:28 10 to be able to move those teeth back up orthodontically. That
11 means he'd have to go through braces for another year. So we
12 made a decision to just remove those and include that as part
13 of the bridge. It will be easier, a lot less work, and he'll
14 be done, and he'd been dentureless for quite a long time by
01:28 15 then, and I honestly didn't want to put him through any more
16 treatment if he didn't need it.

17 Q. How long was it from the time you first saw Ryan until he
18 actually had the bridge, the white part of the teeth, ready to
19 go?

01:28 20 A. Well, I want to say probably less -- maybe a year, Ryan.
21 Do you remember? I don't remember, to be honest with you.
22 Maybe a year.

23 Q. About a year. What was going on with his mouth during that
24 year? Did he have temporary teeth or anything?

01:28 25 A. No, we tried to put temporaries in there, and,

1 unfortunately -- first of all, for the first part of the
2 treatment he didn't have the vestibule, so until he went and
3 had the vestibuloplasty done by Dr. Machado, and we had to wait
4 almost two, three months for that to heal, and then we started
01:29 5 the work. I believe it was right after Dr. Machado gave me the
6 thumbs up and said go ahead, we started to do the insertion in
7 his mouth.

8 Q. So is it your understanding that from the time that Ryan
9 was injured up until about a year ago that he was without
01:29 10 teeth?

11 A. That's absolutely correct.

12 Q. These surgeries and various -- the vestibuloplasty you
13 mentioned, are these painful procedures?

14 A. Probably the most painful procedures you'd ever do in
01:29 15 dentistry. Root canal has a bad rap. I think this is way, way
16 more severe, taking a piece of your -- you have a pizza burn in
17 your mouth, burn a little tissue on the roof of your mouth.
18 Imagine taking a big chunk out of the roof of your mouth on
19 both sides at the same time. I mean, that's about as bad as it
01:30 20 gets.

21 Q. And the disfigurement, obviously Ryan didn't have any sort
22 of teeth for quite sometime?

23 A. You know, it was funny. We became friends after awhile. I
24 mean, you can't help but to like this guy. So I asked him, I
01:30 25 said how are you dealing with this? He just smiled. And I

1 said are you going out at all? I could tell it was hitting him
2 pretty hard, not only the lack of teeth, but his smile, his
3 face on the left side looks uneven, and he has no feeling on
4 that side of his mouth either, so he can't really tell. It's
01:30 5 the feeling of when you come from the dentist and your face is
6 numb and you can't wait for that feeling to go away except it's
7 there all the time.

8 Q. You keep mentioning that. Paresthesia?

9 A. Paresthesia.

01:30 10 Q. And where is that exactly in Ryan?

11 A. Well, if you want to go back to this picture here, I'll
12 show you what happened here, this one. There's no
13 number -- it's 105-553.

14 Q. Let's see if we can go back to -- what's the number,
01:30 15 Dr. Kohani?

16 A. 105-003. That's fine. Right there. Before. There you
17 go.

18 So if you look at that circle here, that little hole.

19 Q. Uh-huh.

01:31 20 A. That's called the mental nerve, the mental foramen. So the
21 nerve actually comes out of that area, and it starts to go on
22 the surface, and it starts to cover up and protect, actually
23 enervates all your lip and the area around your chin. And from
24 his injury, I believe he -- that nerve was cut. Because when
01:31 25 he came to my office, it was a long time after the procedure

1 was done, and he still had -- usually you expect that numbness
2 to go away within a few weeks, sometimes a few months, but if
3 the feeling hasn't come back after a year or two, you're not
4 going to get that back again.

01:31 5 So that's -- so somewhere after the injury, that nerve or a
6 branch of that nerve was damaged. And that's what caused him
7 to have numbness in that side of his face.

8 Q. And the numbness is on the left portion of his mouth?

9 A. The left side of his face, yes.

01:31 10 Q. The prosthetic that you built, the bridge portion, how long
11 did that take? You mentioned the planning process. How long
12 did it take to design this thing and actually get it built?

13 A. We actually brought the team to the office, and we started
14 the work in the office. Took us pretty much the whole morning
01:32 15 just to get the framework and everything dialed in, and then
16 they took it back to the lab, and it took him probably several
17 weeks, three to four weeks, to design the substructure, and
18 then he came back. We tried it in, to verify the bite, make
19 sure everything is done, and then he went back to the
01:32 20 laboratory. It was a Zirconium substructure, and they put
21 porcelain on top of it, and I believe Ryan made a trip there a
22 couple of times for them to help him decide what kind of color
23 and shape and things like that.

24 Q. So there was some test fittings that took place?

01:32 25 A. Definitely some test fittings, some trials to make sure

1 things are fitting right, and then to his satisfaction too.

2 Q. And I think you mentioned the last time you saw Ryan was a
3 couple of -- a month or so ago?

4 A. Yeah, I believe -- well, he came in twice. The first time
01:33 5 he came in, he had fractured a piece of the bridge. It was
6 literally after a few weeks or a month of putting it in, and,
7 again, it was part of him trying to figure out where those
8 teeth are. You and I when we bite down, as soon as our lower
9 front teeth touch the back of the upper front teeth, it's
01:33 10 giving us a sensation of knowing. It's called -- the reflex
11 system, so we know where the teeth are, we know where the jaw
12 is. When you lose that area, you lose that sensation. It took
13 him a while. I think we told him it was going to take a while
14 to learn how to find out where his teeth are. So he's not just
01:33 15 banging into his teeth when he's biting, and so within the
16 first few months -- was it a few months? I don't remember, but
17 he came in he fractured off a piece, so then we had to take the
18 bridge off, send it back to the laboratory, and then they went
19 ahead and repaired it and sent it back within a couple of days,
01:33 20 and we were able to get it back.

21 Q. So he's already just in the few months that he's had the
22 prosthetic bridge been back to you because it broke?

23 A. Yeah, that's correct.

24 Q. And you're saying because he can't really tell how hard
01:34 25 he's biting down?

1 A. It definitely takes some time to get used to that. It's
2 hard for me to guess what he's going through, but that's my
3 best guess was when you don't have nerve endings in the front
4 and you don't have any feeling of where those teeth are, you're
01:34 5 probably going to end up biting or forcing those teeth together
6 a lot more than you would if you had nerves and ligaments
7 around the teeth.

8 Q. Okay. The cleaning that Ryan was in for about a month ago,
9 how is his oral hygiene and dentist visits different than mine
01:34 10 or yours?

11 A. Oh, well, it's different because you've got to work around
12 the prosthetics. And the picture. Can you please put that
13 picture up for me of the lower bridge with the lips retracted?
14 Right there. That's in your hand. I see it.

01:34 15 Q. I think it's 106-2.

16 A. There you go. If you take a look here, you'll see that
17 there's only several areas right there, right there, that
18 there's a little access that he can go underneath those areas
19 to try to keep that bridge clean.

01:35 20 Q. With what?

21 A. With a little small little Proxabrush, a water jet, using a
22 floss threader. It's pretty difficult, but it can be done.
23 So we went through that with him, and I said you've really
24 got to get in there and try to manage your way around and try
01:35 25 to keep these things as clean as you can. You have to come

1 back two, three times, maybe minimum three times a year, to
2 have your professional cleaning, and we can actually remove the
3 bridge, get everything cleaned up, and put it back in there for
4 you. And he -- he was trying to do his best, but it's hard,
01:35 5 it's challenging. These restorations are very challenging.

6 Q. And his restoration in particular because it was a bridge
7 of multiple teeth put together as opposed to individuals?

8 A. That's correct.

9 Q. If he were to just have individual implants, would he be
01:36 10 able to floss and whatnot in between?

11 A. I would say at least ten times easier, ten times easier.

12 Q. Okay. Have we now covered your course of treatment with
13 Ryan over the past couple of years?

14 A. I think so. I believe so.

01:36 15 Q. Can I have Exhibit 104, please?

16 You obviously expect to be paid for the work that you've
17 done in Ryan's mouth?

18 A. Hopefully.

19 MR. LASKE: We would object to this exhibit. Even
01:36 20 though it's dated December 1st, which I believe was 12 days
21 before the initial trial, we got that on February 21st of this
22 year. I don't know why it took so long, and I noticed the last
23 entry on it is from May 4th of 2016, but, again, we got it
24 seven days ago.

01:36 25 THE COURT: I thought that the two of you told me to

1 begin with that there really wasn't a dispute over bills, that
2 the government was stipulating to the --

3 MR. LASKE: For this doctor. This is the only one we
4 didn't stipulate to. The other bills --

01:37 5 THE COURT: Why wasn't this?

6 MR. CHAMBERS: This was exchanged.

7 You've had this for ages.

8 MR. LASKE: On the 21st. That's when I -- unless you
9 have a different date.

01:37 10 MR. CHAMBERS: I don't have a date in front of me, but
11 you've had it for ages.

12 MR. LASKE: The date that I'm aware of, we got an
13 email seven days ago saying this is 104.

14 MR. CHAMBERS: That may be. You've had this document
01:37 15 forever. Maybe it wasn't included in our initial witness list
16 and that's what we were sending over.

17 MR. LASKE: The document that we have is three pages,
18 and it's from Mr. Kohani -- or Dr. Kohani's deposition, and
19 it's different --

01:37 20 THE COURT: What was the amount at the time of the
21 deposition?

22 MR. LASKE: The amount at the time of the deposition
23 was I think like 111, but there were different charges on it,
24 and even though you say it's three pages, I think it's only
01:37 25 two.

1 MR. CHAMBERS: There was one that was omitted. I
2 apologize. When we scanned it in, there's a second page that
3 didn't get scanned.

4 MR. LASKE: We don't even have that or at least in the
01:37 5 binder?

6 THE COURT: You were given -- you were given notice of
7 111,000 in bills?

8 MR. LASKE: Yes, but my understanding is what's been
9 produced more recently, some of these charges have been
01:38 10 changed, some have been taken away, I think some additional
11 ones have been added potentially.

12 THE COURT: Is this different from the first bill?

13 MR. CHAMBERS: No, there was -- at his deposition,
14 Ryan hadn't yet had his full porcelain portion put in, so that
01:38 15 was yet to be done at the time that Dr. Kohani was deposed. We
16 provided them with a statement following that showing the full
17 amount of the charges. There was a prior version of this.

18 THE COURT: When was that statement provided?

19 MR. CHAMBERS: I can go back and look, Your Honor, and
01:38 20 get that for you. I don't recall offhand.

21 THE COURT: It seems like there's a misunderstanding.
22 Plaintiffs were saying that they provided this, and then have
23 re-provided it recently again, but if I'm following what
24 counsel says, Mr. Laske, he says he gave it once before.

01:38 25 Mr. Chambers, is that this particular document that lists a

1 total of 119,000?

2 MR. CHAMBERS: He's been provided several iterations.
3 There was one at the deposition. There was one shortly after
4 the deposition. There was one shortly before the last trial.
01:39 5 And then this one was included with our exhibits in this one.

6 THE COURT: So here's a problem I'm having, Mr. Laske.
7 If it was apparent that there was going to be ongoing
8 treatment, then obviously, you know, they have a duty to
9 supplement their disclosures to you and show you that the
01:39 10 amount has gone up, not just freeze everything in time and not
11 continue on the treatment.

12 MR. LASKE: I understand, Your Honor. I just -- maybe
13 my recollection is a little off, but I just recall that the
14 bill that we've been working off of and we've been discussing
01:39 15 with our experts, when we showed them 104, they had never seen
16 it. So but --

17 THE COURT: What is different on this bill from the
18 one that was produced to you that said -- I mean, there's --

19 MR. LASKE: There were some post-op checks that were
01:39 20 charged. There were four or five. Now they're not on this
21 bill, at least --

22 MR. CHAMBERS: There could be --

23 MR. LASKE: There could be page 2.

24 There was a charge for a legal report. There were a couple
01:39 25 charges for calls between Dr. Kohani and the life care planner,

1 which I don't think is medical care, and then I think there
2 were some other things, but --

3 MR. CHAMBERS: Your Honor, I can explain.

4 MR. LASKE: I can tell you the bill I've seen last was
01:40 5 around 111, but it didn't include the last two charges which by
6 themselves total almost 5,000, so --

7 THE COURT: wait. The last two charges on this
8 page -- oh, I see.

9 MR. LASKE: The last version I saw for May 4th, 2016,
01:40 10 they were blank because I don't know that he had performed the
11 work yet.

12 MR. CHAMBERS: That's right, he hadn't.

13 THE COURT: So the porcelain ceramic crowns had not
14 been put in yet?

01:40 15 MR. CHAMBERS: That's correct. He'd done all the
16 other work. It was just a matter of actually fitting him with
17 the prosthetic.

18 THE COURT: Did you ask the doctor at the deposition
19 whether there was -- it was contemplated there'd be additional
01:40 20 dental work going forward?

21 MR. LASKE: He mentioned he was about to do that.

22 THE COURT: Yeah, okay. The objection is overruled.
23 Check your notes and check what you gave him. Make sure that
24 you did. I'm not trying to blow this off. It's important that
01:41 25 these disclosures be made and they be supplemented when things

1 change, but we're not very far apart on what you were last told
2 and what we're being told today, and in light of the fact that
3 the doctor testified at his deposition, which was -- when was
4 the deposition?

01:41 5 MR. CHAMBERS: Almost a year ago.

6 THE COURT: Yeah, that it was contemplated that
7 there'd be additional procedures. This is not prejudicial to
8 the defendants. Overruled.

9 Go ahead.

01:41 10 MR. CHAMBERS: Thank you, Your Honor.

11 BY MR. CHAMBERS:

12 Q. I think I left off, you expect to be paid for your work on
13 Ryan?

14 A. Yes.

01:41 15 Q. And the work that you performed to date over the past
16 two-plus years, has that been reasonable and necessary as a
17 result of the injuries that Ryan sustained?

18 A. Absolutely.

19 Q. And the charges that you've charged are reasonable?

01:41 20 A. Yes.

21 Q. And customary?

22 A. Yes.

23 Q. Can I see page 2 of Exhibit 104, please? Page 3, I'm
24 sorry.

01:42 25 So if we're looking on the screen here, and I'm happy to go

1 back if you want to look at any individual item, but it looks
2 to me like there's a total outstanding balance of \$113,105.

3 A. Okay.

4 Q. Does that sound right to you?

01:42 5 A. Yeah.

6 Q. And that's the amount that's current and outstanding that
7 you expect to be paid?

8 A. That's correct.

9 Q. For all the work that you performed?

01:42 10 A. That's correct.

11 Q. And then, in addition, if you go up above that, it looks
12 like Ryan made a payment of \$6,000?

13 A. I had him pay part of the lab fee when the lab technicians
14 came into the office, so this was back in -- I think it was
01:42 15 pre-delivery of the upper appliance. He made a payment of
16 \$6,000 to cover the hard cost of all the materials, the
17 abutments, and all the gold pieces that we had to get for the
18 upper ridges and whatnot.

19 Q. So the total, it looks like, between the two of these, you
01:42 20 would simply add the 6,000 to the 1 -- or, excuse me, 113,000
21 for a total between Ryan's out of pocket and the amount that
22 you're owed is \$119,105?

23 A. That's correct.

24 Q. And you mentioned earlier that you agreed to treat Ryan on
01:43 25 a lien?

1 A. Yes, I did.

2 Q. Does that at all affect the treatment that you provide?

3 A. No, it doesn't.

01:43 4 Q. Does it influence at all any of the recommendations that
5 you've made in his case?

6 A. Not at all.

7 Q. How come?

8 A. It shouldn't. He's still a patient, he's still deserves to
9 be treated just like everybody else does. If I decide to
01:43 10 accept a lien, that shouldn't affect the outcome of his
11 treatment or what I decide to do. I mean, I try to keep
12 everything conservative. I recommended what was necessary. I
13 told him not to put the implants on the upper left after those
14 teeth were removed. So I -- not only -- I had his best
01:43 15 interest at heart the whole time, I did.

16 Q. And in addition the past treatment that you provided,
17 you've also made some recommendations to our life care planner
18 about what future dental work Ryan may need?

19 A. That's correct.

01:43 20 Q. All right. I'd like to walk through that with you, if I
21 could. Can I get Exhibit 66 up just for reference? If we can
22 go to page 2.

23 All right. I'm just going to walk through some of these
24 and make sure that we're on the same page.

01:44 25 If you look down about two-thirds of the way, there's an

1 item on the left under the "Care Need" column entitled
2 "Dentist"?

3 A. Uh-huh, yes.

4 Q. And it looks like there's a recommendation here for an
01:44 5 additional visit a year --

6 A. That's --

7 Q. -- for dental cleanings?

8 A. That's correct.

9 Q. And then this periodontal cleaning with removal and
01:44 10 replacement of the prosthetic bridge, what's that?

11 A. Basically unlike you and I -- I haven't looked into your
12 mouth, but most people that come in, they have their dentition
13 intact. It's a normal procedure where the hygienist will go
14 through the mouth and cleans everything and scales and polishes
01:44 15 everything, and you're done.

16 In his case, you can't. You have to remove the
17 restoration, remove the prosthetic, remove the abutments, and
18 then replace the abutments, torque everything down to the
19 proper torque, and then cover it back up, and put the bridge
01:45 20 in, and clean up the cement.

21 So, actually, I mean, you think about the work that goes
22 into it. We try to come up with something that's reasonable.
23 I wasn't assuming that he was going to have the work done in my
24 office because all along, he'd been telling me he wants to move
01:45 25 to Wisconsin, so I figured, you know, somewhere along the line,

1 he's going to have to find someone out there that's going to do
2 these services, and that's typically the fee that most people
3 charge for a procedure like that.

01:45 4 Q. And that's 800 to \$1200 everything 18 to 24 months to have
5 this full cleaning?

6 A. That's correct.

7 Q. Down at the very bottom of this, there's a recommendation
8 for a polish of the veneer every seven to ten years?

9 A. Yes.

01:45 10 Q. What is that?

11 A. Porcelain veneers, just like a nice car, after a while, the
12 varnish on the paint goes away, you've got to take it in to
13 have them detail it. And that's what we're going to do, have
14 him come in and basically polish and go through the entire
01:46 15 series of polishing in sequence and get all those restorations
16 polished up so he doesn't lose his luster. After a while it
17 gets rough and sticks to your lips when you talk, and it
18 doesn't have that nice shine that it first has when it comes
19 out of the laboratory.

01:46 20 Q. And that's a recommendation every seven to ten years?

21 A. It's an estimate depending on his lifestyle and depending
22 on -- you know, it could be more or it could be less, but
23 that's just a guesstimate.

24 Q. Okay. Can we go to the next page, please?

01:46 25 So up at the top here, the first two categories, the future

1 replacement of implants and the future replacement of abutment
2 crowns, before I even dive into what that is, can you just
3 describe to me what the difference between an implant and
4 abutment or crown is?

01:46 5 A. Well, the implant is the titanium screw that we're talking
6 about, so that's the fixture that goes into the bone. The
7 abutment is the interface between the implant and the
8 restoration, which could be a crown or a bridge. So if you
9 lose a crown, as long as the abutment and the implant are okay,
01:47 10 you just replace the crown. If you lose an implant, everything
11 has to go because they're all inner linked and inner connected.

12 So let's say if you lose the upper left implant, because
13 the structure -- I'm sorry, lower one. Sorry. Let's say if
14 you lose one of the implants on the lower. Because that
01:47 15 substructure is connected to all the implants, that
16 substructure has to be redone. If you redo the substructure,
17 the bridge has to be redone. Unfortunately, that's the nature
18 of the beast. If those teeth were replaced individually and he
19 had -- then depending on if any of them had a problem, you'd
01:47 20 take care of the one that has a problem. You'd leave the rest
21 of them alone. That's how I practice in my office. Let's not
22 leave things interdependent of each other, so if something goes
23 wrong here, the other stuff is still okay, you leave that
24 alone.

01:47 25 But in his situation with the lower bridge, it's a

1 one-piece prosthetic that goes over, and if any of those
2 abutments go -- again, depending if the rest of them are good,
3 I don't know, if it's the end one that goes, makes a big
4 difference. If it's the middle one that goes, it may not make
01:48 5 a big difference. So when I came up with this recommendation,
6 I actually did spend some time looking. I called a few of my
7 colleagues. I called the president of the International
8 Academy of Dental Implantology, Dr. Lee, and I asked him, and I
9 said give me some ideas of the longevity of these things in
01:48 10 your hands. And somewhere along the line, even between that
11 and what I've seen just from research, you talking anywhere
12 from 50 to 67 percent of these implants will develop some type
13 of a peri-implantitis or mucositis within five years. And
14 these studies are all done with implants that are individually
01:48 15 placed, not with implants that are connected together with
16 substructure which makes it almost impossible for him to keep
17 it clean.

18 And in one of the studies, if you take a look, they even
19 talk about issues as having lost two to three millimeters of
01:48 20 bone around an implant, and they would consider that an issue.
21 Well, two to three millimeters of bone around his implant is
22 almost 30 percent of the height of the implant. That implant
23 is pretty much on its way out.

24 So I try to come up with a number that I thought was --
01:49 25 given the fact that he's young, if -- God willing, he lives to

1 be in his 70s or 80s, you're talking another 50 years of life
2 to spend to get out of these, 60 years of life to get out of
3 these, realistically speaking. Do I think it needs to be
4 replaced? I think every ten or 15 years, I bet you some of
01:49 5 them are going to go, and so that was really not just a guess.
6 It was more of an educated guess after speaking with a few
7 other people that do nothing but implants for a living.

8 Q. Let me make sure I understand what you're recommending
9 here. There's 12 implants in Ryan's mouth total?

01:49 10 A. Correct.

11 Q. And you're saying of those 12, approximately half or six
12 over the course of the next ten or 15 years are going to
13 develop some issues that will likely require their replacement?

14 A. Maybe not replacement, maybe just some repair. I put in
01:50 15 here if it's possible to remove an implant or you may have to
16 repair an implant, depending on how bad it is and how fast we
17 caught it. There's a lot of things that play an important role
18 into that. I mean, his oral hygiene and smoking. I understand
19 Ryan's smoking now. He wasn't smoking before. And I told him
01:50 20 this last time I saw him, I said I'm telling you, you want
21 these implants to last. And he's dealing with a lot of stress.

22 And I can't imagine. I mean, so I told him, I said look,
23 whatever you need to do, make sure you take care of that
24 because if this stuff keeps up, you will start to lose more
01:50 25 attachment of the bone. One of the number one causes of

1 implant loss is hygiene and smoking. And then you're talking
2 diabetes and things like that. So if he can control that.

3 Q. So you're saying because it's difficult for Ryan to
4 maintain oral hygiene given the prosthetics that he's got, he's
01:50 5 more likely to get peri-implantitis or mucositis or some other
6 oral diseases?

7 A. That's right.

8 Q. And then those diseases in turn can lead to degradation of
9 the implant?

01:50 10 A. That's right. One of the reasons why implants became so
11 popular was because we didn't want to do bridges anymore.
12 Because we knew that once I do a bridge, you pretty much are
13 done with the other two teeth. It's just a matter of time
14 because you can't clean them. It's impossible to clean them.

01:51 15 So they're just going to get bigger and bigger. So, again,
16 doing everything we could, trying to keep his mouth --
17 individually restoring the teeth, unfortunately, that wasn't an
18 option, so the next best option was this design, and this
19 design is inherently -- has a lot of challenges. One of the
01:51 20 biggest ones is for him to be able to get in there and get it
21 clean.

22 So that's why I recommended an extra cleaning a year, and
23 maybe once every so often take the whole thing off, clean it,
24 put it back in. I said I know it's an extra expense, I know
01:51 25 it's extra work, but if you do this, you can probably expect

1 these implants to last you longer. If you don't do these, and
2 based on everything that I've seen, you're talking probably in
3 the ten or 15 years, you're going to have some mucositis or
4 peri-implantitis around these implants.

01:51 5 Q. How does the numbness and paresthesia -- I can't say that
6 word.

7 A. Paraesthesia.

8 Q. Thank you. How does that factor into Ryan's potential
9 susceptibility to peri-implantitis and other oral issues?

01:52 10 A. Not having the ability to have any feedback is bad. You
11 and I, when we have pain or we have sensation or something
12 going on, it tells us that you're aware, and I don't really
13 know how much you'd probably need to talk to a neurologist to
14 really get to the level of how much does he really feel.

01:52 15 From my understanding, he has no feeling. As a matter of
16 fact, when you talk to him and look at him, you can see the lip
17 is much higher on that side of the face. It actually shows in
18 one of the photos that I've given you, so he doesn't have
19 sensation in that side of his face, so how important is that in
01:52 20 his inability to know if the teeth are -- you know, if there's
21 infection in there, if the infection has to get to a level
22 before he knows that the infection is there, so that's -- that
23 was probably an important factor to consider into when I came
24 up with the frequency of the replacement for the implants.

01:52 25 Q. And then the prosthetic bridge that we see in the third

1 line there, what's that?

2 A. The bridge is that one-piece ceramic bridge that you had in
3 your exhibit that goes over the gold post. No, that's on the
4 lower. It's the upper one that's just a white bunch of teeth
01:53 5 stuck together. That one. Right.

6 Q. 106?

7 A. That's right.

8 So the problem with that is that because it's a one-piece
9 bridge, if anything ever happens to any of those teeth again,
01:53 10 if it's something that can be repaired, obviously, you repair
11 it first. If he breaks through the center of that
12 substructure, you have no choice but to replace the whole thing
13 because it can't be welded back on. Zirconia can't be mended.
14 So, unfortunately, that's the nature. So we use Zirconia
01:53 15 because we know that on the lower arch, it has a lot of
16 implants, and those implants can generate a tremendous amount
17 of force. The upper arch is more flexible, more soft, so we
18 knew that what's going to win is the lower arch is going to win
19 when it comes to the forces and fight between the two arches.

01:54 20 So we decided to use Zirconia on the upper arch to give him
21 a little better strength so he doesn't have to replace it as
22 frequently. But, then again, you look at the literature,
23 national average in this country for replacing a crown is 5.2
24 years. That's when insurance companies allow you to change a
01:54 25 crown after five years because they know that -- I'm not saying

1 that I change my crowns after five years. I'd probably look
2 for another profession if that happened, but that's the
3 national average. If you have a crown done in my office today,
4 in five years your insurance company will authorize me to put
01:54 5 another crown because they know they probably should be
6 changed. So if that's the national average, you know, who am I
7 to tell you he's going to be less or more than that? I'm just
8 going by what research or statistics are put in front of me.

9 Q. So you're simply saying over the next 40 or 50 years of
01:54 10 Ryan's life that both the top and bottom will have to be
11 replaced two times?

12 A. In 50 years, I believe that's a pretty fair number, a
13 couple of times. He'll probably have to get them replaced a
14 couple times. Yeah, that's a pretty conservative number.

01:55 15 Q. That can be a result of the loss of implant due to oral
16 disease that we talked about a few minutes ago?

17 A. That's the developing infections around those abutments,
18 having tissue loss, you may have to go back and add some more
19 tissue around those areas because there's no keratinization
01:55 20 left in that area, and with that blood supply and everything is
21 compromised. So those are some of the things that we have to
22 constantly monitor to make sure it doesn't get into the
23 infection state.

24 Q. Let me ask you, if an implant has to go, for whatever
01:55 25 reason, and you have to replace the implant, can I still use

1 the same prosthetic bridge that I used before?

2 A. Good question. Depending on which implant it is. If it's
3 the -- if it's the end implants, then now you're talking about
4 having a greater cantilever, which is me standing here with my
01:55 5 arm out, and somebody's going to sit on my arm. How long can I
6 hold this weight? Now, if I have an implant close to that
7 site, I might be able to leave it alone and not touch the crown
8 or the bridge part and just -- maybe just bury the implant and
9 don't even touch it, right? If it's an implant in the middle
01:56 10 of -- which is the one that supports most of the force, now you
11 have to remove the bridge, graft the area, wait for it to heal,
12 come back, put another implant in there, and make him another
13 substructure, and start all over again. So it really depends
14 on which implants fail and where they are with respect to his
01:56 15 occlusion.

16 Q. And then certainly another reason for the bridge to fail
17 would be if, you know, like what happened before, if a tooth
18 gets chipped or knocked out or anything like that?

19 A. That's correct.

01:56 20 Q. Okay. And the costs that are listed there on the future
21 replacement of implants and the future replacement of abutments
22 and crowns as well as the prosthetic bridge, those are all
23 reasonable in your opinion?

24 A. They are reasonable. Again, I'm not sure where he's going
01:56 25 to end up in 50 years or hopefully I'm not going to be around

1 practicing anymore, but that's a reasonable number. I'm
2 looking at my colleagues, and the ones that are doing implants,
3 and these types of implants, not just single implants, and ask
4 them what type of fees they're charging. I'm pretty much right
01:57 5 there with these guys, so --

6 Q. And the diagnostics down at the bottom of the page there.

7 A. Yeah.

8 Q. What's that about?

9 A. That would be -- that would include a CT cone beam. I
01:57 10 would recommend that done every two years or so. Again, it's
11 not -- there's no major radiation concern in that area. It's a
12 CT cone beam, so the radiation is confined to a very small
13 area, but the amount of information we get is priceless. You
14 can look at the implant 360 degrees around and be able to tell
01:57 15 if he's starting any bone loss, where they are, and be able to
16 maybe jump in there and intervene before it gets too bad.

17 So that's really, really important as part of his checkup.
18 Every couple of years, every two, three years, he should have
19 it done.

01:57 20 Q. And then speaking of maintenance, if we go to the next
21 page, it looks halfway or three-quarters of the way down there,
22 "Miscellaneous Equipment." This looks like just various
23 hygiene products to make sure he can maintain things at home?

24 A. I recommended a water pick to him, and then there's a
01:58 25 couple of different electric toothbrushes that I like that

1 helps him. I don't know where that electric razor came in. I
2 don't think -- but yeah, he should shave probably. I'm not
3 sure where that electric razor thing --

4 Q. But at least with respect to the dental-related things?

01:58 5 A. Yeah.

6 Q. The water pick and the toothbrush and whatnot?

7 A. That's correct.

8 Q. And the cost and frequency. Okay.

9 A. Yeah, that seems fair.

01:58 10 Q. I've shown Dr. Kohani a number of pictures I'd like to
11 offer in evidence. We can do it now or later.

12 THE COURT: Have you shown them to counsel?

13 You don't oppose admission of these photos?

14 MR. LASKE: There's only one really I have a question
01:59 15 about just because I don't recall.

16 Was this produced in discovery?

17 MR. CHAMBERS: It was produced at his depo.

18 MR. LASKE: Okay. It's fine, Your Honor.

19 THE COURT: All right. Without objection. What
01:59 20 numbers on the exhibits?

21 MR. CHAMBERS: There's a series. 82, 83, 86, 100, 97,
22 96, 76, 69, 98, 106, 105, 104, which is the billing, 95, and
23 78.

24 THE COURT: Without objection, those exhibits are
02:00 25 admitted.

1 (Exhibit 82 admitted.)
2 (Exhibit 83 admitted.)
3 (Exhibit 86 admitted.)
4 (Exhibit 100 admitted.)
5 (Exhibit 97 admitted.)
6 (Exhibit 96 admitted.)
7 (Exhibit 76 admitted.)
8 (Exhibit 69 admitted.)
9 (Exhibit 98 admitted.)
10 (Exhibit 106 admitted.)
11 (Exhibit 105 admitted.)
12 (Exhibit 104 admitted.)
13 (Exhibit 95 admitted.)
14 (Exhibit 78 admitted.)

02:00 15 MR. CHAMBERS: Thank you.

16 I don't have any further questions.

17 THE COURT: Cross-examination.

18 CROSS-EXAMINATION

19 BY MR. LASKE:

02:00 20 Q. Good afternoon, Dr. Kohani.

21 A. Good afternoon.

22 Q. So you opined in your report that teeth number 10 and 11
23 were super erupted and they were basically rendered useless?

24 A. That's correct.

02:00 25 Q. And super erupt is another way of saying the teeth have

1 dropped down out of the bone?

2 A. Yeah, there was nothing to stop them from growing, so they
3 super erupted into the mouth toward the opposite arch.

4 Q. And as a result, you removed teeth number 10 and 11,
02:01 5 correct?

6 A. That's correct.

7 Q. You stated when it came to pulling a third tooth
8 potentially, tooth 12, I think in your depo you said,
9 "Honestly, I didn't want to remove anymore teeth from this
02:01 10 guy"?

11 A. That's correct.

12 Q. But you never looked at the dental records of Dr. Jon
13 Cassell, the dentist who treated plaintiff about six months or
14 so before his accident, did you?

02:01 15 A. I don't think I had that record, no.

16 Q. So you never saw the X-rays taken by Dr. Cassell in
17 November of 2012, correct?

18 A. I don't believe I did.

19 Q. And if a tooth drops down out of the bone, will the tooth's
02:01 20 contact be tight and resist floss?

21 A. It really depends. It depends on the tooth, it depends how
22 much bone you have around it and whatnot. Contact is usually
23 not something that we consider when it comes to evaluating the
24 amount of super eruption in the tooth.

02:01 25 Q. Did you attempt to inspect that when you were treating

1 Ryan?

2 A. Inspect the contact between the teeth?

3 Q. Yes.

02:02 4 A. I honestly don't see the significance of evaluating the
5 contact between two teeth when there's eight millimeters --

6 Q. It's just a yes-no question. I was wondering if you did
7 it.

8 A. No, I didn't, no.

02:02 9 Q. And plaintiff's teeth at number 10 and 11, were they
10 touching each other normally?

11 A. They were touching each other normally? No, they were not.

12 Q. And the teeth at number 11 and 12, were they touching each
13 other normally? I asked about 10 and 11. Now I'm asking about
14 11 and 12.

02:02 15 A. They're touching each other, but what's normal for his
16 mouth normal or -- I really don't understand your question.

17 Q. Normally for any patient.

18 A. Okay.

19 THE WITNESS: If -- may I explain this, Your Honor?

02:02 20 THE COURT: You may.

21 THE WITNESS: If you take a look at what's called the
22 marginal ridges of the teeth, you take a look at the marginal
23 ridge between tooth number 12 and number 13, that's the center
24 of the tooth. You draw a line. You can see that tooth number
02:02 25 13, the marginal ridge is below tooth number 12 by at least

1 two, two and a half, to three millimeters. You take a look at
2 the marginal ridge between tooth number 13 and 14, they're
3 perfectly even. You look at the marginal ridge between 14 and
4 15, they're perfectly even. That's the marginal ridge right
02:03 5 here. When you come up between number 12 and 13, there's a
6 huge step up, and then you follow that with number 11. You can
7 see that number 11 and 12 are almost at the same height. And
8 then you can see number 10 is also super erupted about six
9 millimeters into the arch.

02:03 10 So to answer your question, do the contacts are normal,
11 normal in respect to each other, yes, but normal with respect
12 to the adjacent teeth, no.

13 BY MR. LASKE:

14 Q. Okay. For the record, I'd like to direct your attention,
02:03 15 which we'll pop up on the screen in a second, Exhibit 471, page
16 1. And these are the X-rays that were taken by Dr. Cassell in
17 November 2012. I think that's roughly seven months before
18 Ryan's accident.

19 Can you please identify teeth 10 and 11? And I'd like to
02:04 20 now direct your attention to Exhibit 443, page 3. Can you, for
21 the record -- or can you circle teeth 10 and 11?

22 MR. LASKE: For the record, I'm directing the witness
23 to a side-by-side enlarged view of both teeth number 10 and 11
24 showing the pre-accident and the post-accident X-rays.

02:04 25 BY MR. LASKE:

1 Q. Isn't it true that teeth number 10 and 11 are identical
2 positions?

3 A. Absolutely not true at all. You're comparing a panoramic
4 view which is taken on a radius versus a PA, which is taken on
02:04 5 a flat level. If you know physics, you know you cannot compare
6 those two images because they're not on the same space. When
7 you take a panoramic view, the X-ray is going around the
8 patient's head almost in a 360 degrees, which causes
9 distortion. You don't have the same exact level of
02:05 10 measurement. That's why these X-rays are never used to place
11 implants because you're almost always wrong. A periapical is
12 just a two-dimensional image of a tooth that's taken
13 perpendicular to the film. So there's no way you can compare a
14 periapical with a panoramic view unless that panoramic view is
02:05 15 taken in a CT which allows you to compare millimeter by
16 millimeter in all different dimensions. So I can't answer your
17 question because this is not -- you can't draw --

18 Q. So you're saying we can't compare these two?

19 A. You can't because those images are taken at two
02:05 20 different -- in two different ways, and you can't compare a PA
21 versus a panoramic view of a tooth and make conclusions from
22 that. You can't do that.

23 Q. And you know that the -- which image was the panoramic?

24 A. The one on the left side is a panoramic -- on the right
02:05 25 side is a panoramic. The one on the left side is your PA.

1 Q. You didn't take either one of these images?

2 A. I don't have to. I know enough about physics and
3 radiography to know that a panoramic view is never, ever
4 diagnostic enough to be used when it comes to knowing exactly
02:05 5 where teeth are in space because it's taken as the film goes
6 around your head.

7 Q. I was just asking a simpler question. Yes or no; did you
8 take these images?

9 A. I did not take these images, no.

02:06 10 Q. Did you subsequently take any images?

11 A. Yes, I have. The ones that Mr. Chambers was showing you.

12 Q. And what is a CEJ?

13 A. Cement to enamel junction.

14 Q. What is that in --

02:06 15 A. That's where the enamel and cement with the root meet
16 together.

17 Q. And could you on Exhibit 471, page 1 -- can you point that
18 out, where that would be?

19 A. On which picture?

02:06 20 Q. On the one that's depicting teeth 10 and 11, where is the
21 CEJ?

22 A. If you can make that bigger. Well, I can tell you -- oops.
23 Can you erase that, please? This would be the CEJ, and on the
24 canine, yeah, the CEJ would be right about there, so right
02:07 25 there, right there.

1 Q. And between the two images, was there a change in the CEJ?

2 A. Between the two images?

3 Q. Yeah.

4 A. Which two images?

02:07 5 Q. The pre and post-accident images.

6 A. Can you put the other one up so I can see it?

7 Q. We can put the other one up.

8 A. Again, it would be impossible for me to determine that

9 because I don't know what I'm comparing it to. When a tooth
02:07 10 superior erupts, the bone comes with it, so you're trying to
11 measure something that's not constant. You see the position
12 of -- when the tooth super erupts, the entire osseous area with
13 the tissue drops down with it, so --

14 Q. Again, I think I'm asking something -- I am trying to ask
02:07 15 it a little simpler.

16 Can you point out in the other image, 443-3, where the CEJ
17 is?

18 A. I guess your guess would be as good as mine in that image.
19 I can't tell you, but if I was going to guess, I'd say it would
02:08 20 be about here.

21 Q. Okay. So you're saying in this image, you can't tell?

22 A. I mean, you can't compare.

23 Q. I'm not asking you to guess.

24 A. I can't, no, I can't, I honestly can't, no.

02:08 25 Q. At this time, when is the last time you saw Ryan Moore?

1 A. A few months ago, I believe.

2 Q. Do we have any bills or records of that? Have you produced
3 them?

4 A. I think that was something that he just took care of his
02:08 5 own, right, Ryan? It was not related to the accident. He just
6 came in for a routine cleaning and maintenance, and that was --
7 I think he took care of that on his own.

8 Q. But have you provided any records of that?

9 A. You ask Mr. Chambers. I don't really remember or have any
02:08 10 recollection of my records.

11 Q. Because I don't have those records, so can you tell me the
12 date?

13 A. I honestly don't remember.

14 Q. Is it this year?

02:08 15 A. Was it this year? I don't think it was this year, no.

16 Q. Was it fall of last year, summer?

17 A. I believe it was around that time. But, again, I honestly
18 can't remember my schedule.

19 Q. And when you saw Ryan last, did he have any infections in
02:09 20 his mouth?

21 A. He did not have any infections, but he had a lot of
22 irritation around the implants.

23 Q. Does he currently have any broken teeth?

24 A. Not that I'm aware of.

02:09 25 Q. And when you saw him last, did he have any broken teeth?

1 A. Not the last time he came for his hygiene visit, you mean?

2 No, otherwise I would have been informed.

3 Q. Again, I don't have any records of it, so I don't know what
4 it was.

02:09 5 A. From what I remember, Counsel, he came in once the tooth
6 was broken off, we repaired it, and then he came back for
7 follow-up visit, and then he came back for just a regular
8 cleaning hygiene visit. That's all I remember from the last
9 maybe ten months.

02:09 10 Q. I'm not trying to be vague or trip you up. It's just
11 without any records, I kind of have to ask.

12 A. Honestly, I don't recall exact specifics, but I can provide
13 it to you.

14 Q. When the last time you saw Ryan, did you have to make any
02:09 15 adjustments for his bite?

16 A. I can't recall.

17 Q. After you originally put the crowns and bridge work in, did
18 you have to make any adjustments?

19 A. Yes, we do, yes, we do. We almost always have a few visits
02:10 20 of checking up unless, again, we took a lot of time to dial
21 everything in, so sometime --

22 Q. Do you recall with Ryan if you had to do that?

23 A. I don't remember. If I did, it would be in my notes. I
24 can't really remember.

02:10 25 Q. Notes. We're talking about medical records?

1 A. Yeah, my medical records, notes, progress notes.

2 Q. And so you don't remember how many adjustments you would
3 have had to make or you had to make?

4 A. How many visits of adjustments, you mean?

02:10 5 Q. Yes, for the bite.

6 A. I honestly can't remember. It's usually no more than a
7 few. Until he gets comfortable where he bites on, everything
8 meets at the same time and the same consistency and the same
9 amount of pressure.

02:10 10 Q. How much did you charge for that?

11 A. For the --

12 Q. Any adjustments you had to make.

13 A. I can't remember. It's all written up in my chart.
14 Everything is documented.

02:10 15 Q. So the exhibit we have is 104. That isn't your current
16 bill then?

17 A. I don't have that on my screen.

18 Q. If it goes to May 4th -- if it goes to May 4th, 2016. It
19 mentions, "Crown, porcelain, ceramic." It doesn't mention
02:11 20 anything about adjustments after that.

21 A. Okay.

22 Q. So is there another bill out there?

23 A. I have no idea.

24 Q. Did you make any adjustments for cosmetic reasons after you
02:11 25 put in the crowns and the bridge work?

1 A. I don't understand your question.

2 Q. So potentially you can make an adjustment for the bite,
3 right?

4 A. That's correct.

02:11 5 Q. And potentially you can make an adjustment if the patient
6 doesn't like the way it looks? Is there a way to adjust that?

7 A. I mean, if the tooth are too long, it can make it shorter,
8 but once the teeth are done, it comes out, it's pretty much
9 done.

02:11 10 Q. And all I'm asking again, I think these are simpler
11 questions. Did you have to do it?

12 A. I honestly don't remember if he did, but when the bridge
13 was delivered, we took enough time to make sure the bite is
14 comfortable, his speech is comfortable, and it's not

02:11 15 interfering with anything, and he may have come back once or
16 twice after that to check things up to make sure things are
17 holding up, no screws are getting loose, and then once we
18 realized things are stable and he's fine, there's no reason to
19 keep dragging him back to the office, but I honestly don't
02:12 20 remember when I saw him and specifically what I did, but it
21 should all be in my notes.

22 Q. You don't remember one way or the other if you made
23 adjustments, or you remember adjustments, but you don't
24 remember when?

02:12 25 A. Exactly. I remember making adjustments. I just don't

1 remember when it was.

2 Q. Do you remember how many adjustments you had to make? Was
3 it one?

4 A. I don't recall. I don't recall.

02:12 5 Q. As of your last exam, did the plaintiff take good care of
6 his natural teeth?

7 A. Yes.

8 Q. And as of your last exam, did plaintiff take good care of
9 his porcelain teeth?

02:12 10 A. He's doing the best that he could, yeah.

11 Q. What is that?

12 A. The best that he can. I mean, he presented with plaque and
13 buildup and irritation and some, you know, gingivitis around
14 the implant crowns, but, again, that's expected. I didn't
02:12 15 expect to see him and have meticulous home care all of the
16 sudden. I expected to see some things. That's why I told him
17 he should come in more frequently just to help himself stay on
18 top of this stuff.

19 Q. Without the medical records, that's why I'm asking for a
02:13 20 little more explanation than just -- anything else that you
21 noticed? Was there something that you saw that concerned you
22 at the time that you had to talk to him about his oral health?

23 A. Not necessarily about his oral health, but I know I kept
24 talking about his lip and his numbness and whether he still has
02:13 25 any feelings that's coming back. Those were the only things

1 that we discussed outside of, you know, how's the bite and
2 how's the teeth and are you getting out much? Just small talk,
3 but no, I don't think I did much of anything after the case was
4 delivered.

02:13 5 Q. And as of your last exam, was the plaintiff pretty
6 comfortable with his new porcelain teeth?

7 A. He seems to be comfortable, yes. You'll have to ask him
8 that.

9 Q. In your deposition which was taken in April of last year,
02:14 10 you opined the plaintiff will need bridge work removed every 18
11 to 24 months for cleaning?

12 A. That's correct.

13 Q. But in your report I believe you put it would have to be
14 removed annually to be cleaned and properly maintained?

02:14 15 A. Which one is it?

16 Q. Yeah, which one?

17 A. If you asked me if it was my mouth, I would remove it every
18 six months. I'll be honest with you. But logistics, and it's
19 not -- it doesn't make sense for him to go in and have
02:14 20 everything taken out because, again, if you want to make sure
21 that things are going to do what they do and he's not going to
22 end up developing any problems, you should visit that area more
23 frequently than let it go for maybe 18 months or two years, but
24 when I was questioned by that lady from the life, I understood
02:14 25 what they're trying ask me to do. So I was trying to be very

1 fair about my guesstimates. I didn't just throw numbers out
2 and say oh, yeah, he needs to have it every six months. I said
3 probably if he's doing everything he should and if everything
4 goes well, I think once every 18 months to two years is a good
02:15 5 amount of time to remove something, clean it up, and put it
6 back together. You're asking me what's better for him? I
7 would say every six months, if he could. If he was my family,
8 I would make him come to the office every six months, take
9 everything out, clean everything up, and put it back in because
02:15 10 it wouldn't cost him anything. It's expensive. It takes time
11 to do that stuff.

12 Q. And you opined that plaintiff will need new implants every
13 10 to 15 years, correct?

14 A. Not all new implants. I said that there's probably a
02:15 15 chance that maybe half of his implants would have to be
16 replaced over his lifetime a couple of times.

17 Q. Okay. Isn't it true if the tissue is healthy and there's
18 no infection, there's really no reason to remove the implants?

19 A. Absolutely true, if the tissue is healthy and there's no
02:15 20 infection, there's no reason to touch the implant.

21 Q. When the plaintiff first saw you back in March of 2015, did
22 he have insurance?

23 A. I don't recall.

24 Q. Did your office ask if he had insurance?

02:16 25 A. I assume they do, but when I saw him, I knew this was not

1 an insurance-related injury because his insurance would only
2 pay for one tooth to get fixed and he would be maxed out. So
3 this was an accident-related case where I would have to kind of
4 postpone my fee, my payments, until this case was taken care
02:16 5 of.

6 Q. Did you make any attempt to bill his insurance?

7 A. I don't remember if I did. I can look into the chart and
8 see if my office did or not, but, again, I don't recall.

9 Q. And, in fact, Joel Berger, who preceded you, who was
02:16 10 originally going to do a lot of the work that you ultimately
11 performed, he did bill Ryan's insurance. Did you know that?

12 A. I knew that he billed some medical insurance or something,
13 but that has nothing to do with -- I'm doing the restorative
14 part of it, and Dr. Berger does the surgical part of it.

02:16 15 Dr. Berger does not restore teeth. He just places the
16 implants. I happen to place implants and restore implants, but
17 he did the surgical aspect, and then the only thing that I did
18 which is with regard to the surgery was uncover of the upper
19 implants and putting the healing caps in. And even

02:17 20 though -- even though Berger should have probably done it the
21 first time around, but, again, I don't understand why he
22 didn't. I'm sure he had his own reasons. He's a very good
23 surgeon. So when he came to my office, the lowers were already
24 exposed. The uppers were not exposed, so I had to expose them
02:17 25 and put the healing caps in.

1 Q. So your understanding is Dr. Berger wasn't going to play
2 any role in restoring the teeth?

3 A. That's correct.

4 Q. Who told you that?

02:17 5 A. I've been working with Dr. Berger for several years in this
6 community, so I know Joel Berger is a maxillo, maxillofacial
7 surgeon, and he does not restore teeth. He places implants in,
8 and he usually refers them to me or someone like me.

9 Q. So you didn't bill any medical insurance at any time in
02:17 10 this case?

11 A. I don't think so. As a matter of fact, I'm almost positive
12 I didn't.

13 Q. Is it your customary practice to not bill insurance if a
14 patient has insurance?

02:17 15 MR. CHAMBERS: Your Honor, can I just object? I don't
16 know that the presence or absence of insurance, even in a bench
17 trial, is something that's relevant.

18 THE COURT: I'm not sure of the relevance either.

19 MR. LASKE: I'll move on to something else.

02:18 20 BY MR. LASKE:

21 Q. I'd like to direct your attention to Exhibit 371, page 5.
22 Actually, you know, we'll use 104 because these are your
23 current bills, right? At least the current bills we have.
24 You'll see -- I think it's the fourth column. It says
02:18 25 "Transaction."

1 A. Okay.

2 Q. And, actually, is there a way to enhance this?

3 THE CLERK: There is. There's a little knob there to
4 zoom in.

02:18 5 THE WITNESS: The other way. A little more.

6 BY MR. LASKE:

7 Q. Okay. Well, the first entry has the -- it says "D2740,"
8 and it says, "Crown, all porcelain, ceramic." What does the
9 "D2740" mean?

02:19 10 A. Those are dental codes that are used to identify
11 every -- in my office, if you put in a crown, it automatically
12 pops a code, which is a code that's used in this country by
13 everyone, so we know exactly what type of a crown it is, what
14 material we're using, and whatnot.

02:19 15 Q. Is that a CPT code or a different --

16 A. This is probably a CPT code because our computer -- again,
17 all of our computer programs operate on a CPT code.

18 Q. And did you use your usual and customary charges for the
19 CPT codes?

02:19 20 A. Depending on CPT code for what procedure, for what type of
21 a case, regular single implant crown or --

22 Q. In other words, when you enter in the CPT code, does it
23 give you a number, or do you fill in your own number?

24 A. Again, depends on the case, depends on what type of a
02:19 25 patient you're working on. If it's a straightforward single

1 crown, are you matching a single tooth to another six crowns or
2 veneers in the mouth? A crown is not a crown is not a crown,
3 so you can't do a crown on the last tooth and one on the front
4 and expect to have the same fee. Some people do.

02:20 5 Q. But you're billing for each item separately. Isn't that
6 correct?

7 A. That's right.

8 Q. And so is there a reason why if there's more crowns you
9 have to put in than less that the charges would change based on
02:20 10 the fact that you're separately billing different crowns?

11 A. What do you mean, "separately billing"?

12 Q. Don't you have different entries for each crown?

13 A. Well, yeah, every tooth has a procedure code, and every
14 procedure that we do has a fee associated with it.

02:20 15 Q. And I'm just asking is the fee standard? Is this fee for a
16 crown going to be the same every time? I know the more you put
17 in, the more it will cost.

18 A. Again, I don't understand your question. Is it the same
19 for Ryan, or is it the same for all my other patients in the
02:20 20 office?

21 Q. All your other patients.

22 A. No, because the other parents in my office didn't have the
23 same type of restoration that Ryan had.

24 Q. So because of that, the numbers went up, down?

02:21 25 A. The fees changed because of the complexity of his case and

1 how much time we had to spend with the lab technician and
2 ceramist and whatnot.

3 Q. How did the fees change?

4 A. The fees were probably slightly higher.

02:21 5 Q. Doubled, tripled? Were they doubled, tripled?

6 A. No, that's not doubled at all.

7 Q. Are they higher than normal or --

8 A. They're higher than -- they're higher than probably a
9 typical crown patient.

02:21 10 Q. So you went through this then. It gives you a number, and
11 then you increased the number?

12 A. You adjust the number. Whether it's increased or adjusted
13 or lowered, yeah, and that's all done in the front office.

14 Q. Do you know how much it was increased?

02:21 15 A. I have no idea.

16 Q. Did the fact that you were billing on a lien affect the
17 numbers at all?

18 A. No, it doesn't.

19 Q. Is an implant replacement the same thing as a root form
02:21 20 fixture to the jaw?

21 A. Implant replacement?

22 Q. Yes.

23 A. No. An implant could be considered a root form to the jaw,
24 but an implant replacement is replacing a prior fixture.

02:22 25 Q. An implant. An implant.

1 A. Is an implant --

2 Q. How would you describe an implant?

3 A. An implant is a fixture that you place in the jaw to be
4 able to restore with crowns or whatnot later on to secure a
02:22 5 prosthetic.

6 Q. Okay. And it's to the root of the jaw, right?

7 A. To the bone.

8 Q. Yeah?

9 A. There's no root in the jaw. It's the bone.

02:22 10 Q. And did the cost for the implant replacement you performed
11 on the plaintiff include replacing the abutment or just the
12 crown?

13 A. Which -- I didn't perform any implant replacement on him.
14 I'm not sure what you're asking.

02:22 15 Q. The implants you performed, did it include replacing the
16 abutment or just the crown?

17 A. I didn't replace any implants on him.

18 Q. Okay.

19 A. Yeah.

02:22 20 Q. On page -- so do you typically bill for postoperative
21 checks?

22 A. Yes, there's a small fee for post-op check depending on
23 what we do.

24 Q. Those are not included as part of the overall procedure?

02:23 25 A. Sometimes they are. Sometimes they're not. That's really

1 something that I discuss with our billing department in our
2 office.

3 Q. Why sometimes yes and why sometimes no?

02:23 4 A. Because not every post-op is the same. Sometimes you have
5 to come in and debride the area, irrigate the area, take out
6 sutures, place more medicament inside, and sometimes just to
7 take a look to make sure everything's healing properly.

8 Q. For Ryan Moore, what was the post-op checks for?

02:23 9 A. For his post-op checks, we had to remove all the healing
10 caps, clean everything up, and put all -- and irrigate the area
11 and put all the healing caps back in. We did that almost every
12 time he came into the office.

13 Q. And does Exhibit 104 -- are these your bills? Because,
14 again, it sounds like you may have done some procedures after
02:23 15 this.

16 A. Yeah, these are the bills. I don't think we did anything
17 after this. This was the last thing that we did on him was the
18 crowns and the -- it was the crown at number 13, and that was
19 it.

02:23 20 Q. Okay. Because a little bit -- a little while ago you
21 mentioned you'd seen him more recently.

22 A. That was not included in his -- with his trial fee that he
23 paid out of that appointment out of his own pocket.

24 Q. Okay. And are you saying those bills are separate from
02:24 25 this case or --

1 A. I believe so because he would have to have a cleaning done
2 regardless of the accident, so I didn't think that was
3 something that I could put on the bill.

4 Q. The amount for the procedures performed after your initial
02:24 5 expert report, which was around November 30th, 2015, is it
6 1 -- and this is page 3 of Exhibit 104. Is the total -- I
7 think there's a subtotal of 119,105?

8 A. That was including the hard cost for the lab material,
9 which Ryan took care of, so the balance was 113,105.

02:24 10 Q. Taking into account that he paid you \$6,000, the charge
11 before he paid you was --

12 A. Was 119, that's correct.

13 Q. And you currently have a lien of how much is it, 113 --

14 A. I believe so.

02:25 15 Q. -- 105?

16 And he hasn't paid anymore since then?

17 A. I don't think so, no.

18 Q. And in your expert report from November 30, 2015, you
19 mentioned follow-up care would be about 98,340. I think
02:25 20 because of the passage of time, your past care -- or your
21 future care became your past care. Does that sound about
22 right?

23 A. I'm not quite sure if I understand.

24 Q. In 2015 you did the work in 2016. So did the past -- the
02:25 25 future become the past? You projected out six months before

1 you did the work it would cost this much amount, and you said
2 \$98,000?

3 A. I see.

4 Q. And then ultimately it looks like it was 119, or are those
02:25 5 two different charges should we add those together?

6 A. I understand your question. I stuck to the plan. We made
7 a plan for him, and based on the plan that I devised for him, I
8 guesstimated the cost is going to be that much, and we stayed
9 within that limit.

02:26 10 The only thing that we did differently was what I think I
11 believe I mentioned to you removing of the other two teeth. I
12 anticipated that we had to do that. We had several discussions
13 with the lab to make sure if I can leave them alone or whether
14 it would affect the entire outcome of our case, and they said
02:26 15 you can't leave those teeth alone because they've dropped down
16 so much, there's no room for any teeth on the bottom for him to
17 even chew on.

18 Q. From your initial report where you estimated 98,000, the
19 reason why we're at 119 is because of the two extra teeth?

02:26 20 A. I believe there was a couple of extra teeth that we had to
21 remove, and then there was a couple of extra teeth that we had
22 to add to the upper partial, the implant bridge that we put in
23 there. Then we had to put some bone-grafting material in the
24 area that we pull the teeth out of.

02:26 25 Q. So, again, based on the fact that the report was November

1 2015, that 98,000, that's kind of subsumed into this 119,
2 right?

3 A. That's correct.

4 Q. It's not a different number?

02:27 5 A. No, it's not.

6 Q. And I think earlier counsel showed you some of the numbers
7 from Nurse Casuto's life care plan?

8 A. Yes.

9 Q. And you spoke to Nurse Casuto?

02:27 10 A. Yes.

11 Q. And you gave her the information for those numbers?

12 A. That's correct.

13 Q. And if we were to total those up, I believe they come out
14 to a little over \$652,000?

02:27 15 A. Okay.

16 Q. Have you ever totaled it up? Was it totaled up for you?

17 A. It was done all by her. She asked me questions, and I
18 tried to answer her as honestly as I could.

19 Q. Okay. So you claim now that he needs 652,000 of dental
02:27 20 care beyond the 119,000 of care you've provided to date?

21 A. For his lifetime.

22 Q. For his lifetime?

23 A. Yes.

24 Q. Did you ever supplement your report after your initial
02:27 25 report of November 30, 2015, to add that information?

1 A. I'm not sure if I did. I can ask counsel if I reported
2 another -- if I sent another report in after that one or not.
3 I don't recall, but we had numerous phone conversations with
4 the nurse and numerous phone conversations, and I don't really
02:28 5 recall if I sat down and wrote another report. But --

6 Q. So you don't know one way or the another?

7 A. I honestly don't know, yeah.

8 MR. LASKE: Nothing further, Your Honor.

9 THE COURT: The life care plan made reference to a
02:28 10 brain MRI. Did you recommend that?

11 THE WITNESS: No, I didn't.

12 THE COURT: Okay. Any other questions of the doctor?

13 MR. CHAMBERS: Nothing, Your Honor.

14 THE COURT: May this gentleman be excused?

02:28 15 MR. CHAMBERS: As far as I'm concerned.

16 MR. LASKE: Yes.

17 THE COURT: Thank you. You may stand down. You're
18 excused.

19 THE WITNESS: May I take these?

02:28 20 THE COURT: Sure.

21 Next witness.

22 MR. CHAMBERS: I'd like to call Debbie Halbman.

23 DEBRA HALBMAN,

24 PLAINTIFF'S WITNESS, SWORN

02:29 25 THE CLERK: would you state and spell your full name

1 for the record.

2 THE WITNESS: My full first name is Debra, D-E-B-R-A,
3 H-A-L-B-M-A-N.

4 THE CLERK: Thank you.

02:29 5 DIRECT EXAMINATION

6 BY MR. CHAMBERS:

7 Q. Good afternoon, Mrs. Halbman.

8 A. Hi.

9 Q. How do you know this good-looking gentleman to my left?

02:29 10 A. He's my oldest son, my second child. I have three. So
11 I've known him all his life.

12 Q. And you're not from California?

13 A. No, I'm not. I'm from a suburb of Milwaukee, Wisconsin.

14 Q. And that's where you currently live?

02:30 15 A. Yes.

16 Q. And is that where Ryan also grew up?

17 A. Yes. In fact -- well, actually, when he was growing up, we
18 lived in Wauwatosa. I now live in Menomonee Falls, but they're
19 both suburbs.

02:30 20 Q. Are you currently employed?

21 A. I am.

22 Q. What do you do for a living?

23 A. I'm center director for KinderCare Learning Centers, and
24 I've been there for 28 years.

02:30 25 Q. So you're dealing with toddlers and young children?

1 A. well, we have children from six weeks to 12 years of age,
2 and prior to doing that, I taught junior high and high school,
3 so, you know, I've had the whole gamut from birth on up to
4 adulthood I guess you'd say.

02:30 5 Q. Lucky you.

6 well, I wanted to, if we could chat a little bit about
7 Ryan. And I'm interested early on anyways about his formative
8 years growing up.

9 when he was a young man, I assume he lived with you?

02:30 10 A. Yes, yes.

11 Q. For how long?

12 A. He lived with me for about 20 years. I think it was when
13 he was around 20 that he moved out. I am divorced from Ryan's
14 father, but Ryan and his brother and sister lived with me. I
02:31 15 had placement.

16 Q. So Ryan lived with you along with his brother and sister
17 through high school?

18 A. Correct.

19 Q. And elementary school and so on?

02:31 20 A. Correct.

21 Q. How would you describe Ryan as a young man?

22 A. well, Ryan is a very hard-worker. He's one of the -- he
23 always was one of the youngest kids in his class. His birthday
24 is in August. And many of our neighbors would hold their
02:31 25 children back a year, but I didn't, so Ryan always had to kind

1 of work a little harder to keep up with his friends, both
2 athletically, physically, as well as academically, but he
3 always did. He's always been a real hard-worker.

02:32 4 Ryan has always been a happy -- very well balanced, from a
5 mother's point of view, person. He's always had a lot of
6 friends, both male and female, and he was a great athlete, he
7 played softball, he played soccer. For a very short period of
8 time, he was the place kicker for the football team, so he was
9 involved in things. He and his brother started working. Ryan
02:32 10 was ten, Adam was eight when they started their paper route.
11 That was right after I got divorced, and there were several
12 things they wanted, like shoes that I couldn't afford, so I'd
13 basically told them they were going to have to start earning
14 some money. Neither one of them were old enough to sign up for
02:33 15 the paper route, so my daughter, Carrie, who was 12, did, so it
16 was in her name, but it was Ryan and Adam that did the delivery
17 every day. Sundays I used to have to get up and take them, but
18 they would do that then too.

19 Q. In the wintertime?

02:33 20 A. Yes.

21 Q. In Wisconsin?

22 A. Yes.

23 Q. Sounds like fun.

24 So it sounds like Ryan had a strong work ethic from a
02:33 25 relatively young age.

1 A. He did. He was also a Cub Scout. He quit right after. He
2 did not become a Boy Scout. He was just a Cub Scout. So he
3 also went out and, you know, did the Cub Scout candy sales and
4 things like that too. So I made sure that even as a single mom
02:33 5 that my kids didn't suffer. I could have moved some place that
6 would have been a lot cheaper, but they were well-grounded in
7 the neighborhood. Like I said, they all had great friends,
8 they were great schools, and Ryan was a -- you know, was a good
9 student. He wasn't a straight A student, but he was a good
02:34 10 student.

11 Q. Did you ever have any problems with Ryan during high school
12 or junior high?

13 A. Well, every mother has problems with their children at one
14 time or another, but nothing out of the ordinary. I mean, I
02:34 15 can't remember a lot of different -- you know, it was just
16 mostly coming home a little bit late or maybe not always going
17 exactly where they said they were going to go, but by and
18 large, he was good. And if I did catch him doing something,
19 the one thing I can tell you about Ryan, one of the things I
02:34 20 told all three of my kids is I can accept almost anything, but
21 I can't accept you lying to me, and Ryan never did. Ryan
22 always would tell the truth, and if there was punishment, my
23 other philosophy was if you do the crime, you do the time, and
24 he would also accept, you know, any punishment that he would
02:34 25 get too.

1 Q. So he graduates high school, I presume?

2 A. Yes.

3 Q. And during his high school years, you mentioned he was
4 involved in sports, and he had a bunch of friends. Would the
02:35 5 friends come in and out of the house? Would he go over there?
6 Tell us a little bit about that.

7 A. He had friends over. In fact, he has two friends that live
8 here in California, and one of them I always said was my third
9 son. He would go to his friend's house to -- you know, one of
02:35 10 the things -- that's one of the things about Ryan, no matter
11 where he went, he could make friends.

12 Several summers he worked at -- I don't know if you've all
13 heard about the Summerfest that we have on the Milwaukee
14 lakefront. It's one of the biggest music festivals in the
02:35 15 world, and Ryan worked there through high school and well as
16 through college, so he was just somebody who could go and make
17 friends anywhere. He's a likeable guy.

18 You know, you'd mentioned in your opening about the fact
19 that they did call him Chucky, and that came from Chuckles
02:36 20 because he always had a great sense of humor. He laughed a
21 lot. He smiled a lot. He was just, you know, a nice kid.

22 Q. Once he graduated from high school, did he go off to
23 college?

24 A. He did go to college. He still lived at home. He went to
02:36 25 the University of Wisconsin in Milwaukee, and he started there,

1 but then he dropped out for a while, got a full-time job, and
2 finally decided to go back to school and finish his degree. He
3 initially chose his major to be education, and I think that
4 just part of it was he was -- he wasn't really ready to make
02:36 5 that kind of a choice, and so, like I said, he dropped out of
6 college, got a full-time job, and then when he went back to
7 school is when he went -- he had a criminal justice major, and
8 he really enjoyed that, and the reason I know that that was
9 really his passion was because he made the dean's list every
02:37 10 year, every semester, after he went back to school, so
11 he -- he'd matured enough to develop some really good study
12 habits, but I really felt that this was something that, you
13 know, it was truly his passion.

14 Q. How long did he attend University of Wisconsin before he
02:37 15 dropped out?

16 A. I think he went for a year, possibly a year and a half.

17 Q. And then decided to go to work, you said, a full-time job?

18 A. Uh-huh.

19 Q. What sorts of jobs was Ryan doing back then?

02:37 20 A. Well, like I told you, he worked at Summerfest. He worked
21 for Leff's Lucky Town. He was the bar manager. He also was a
22 painter. A friend of his owned a painting company, and he
23 worked for Bill for quite a long time. In fact, I think he
24 even worked for him once he went back to school because that's
02:38 25 something he could do in the summers or on the weekends when he

1 wasn't in school. So, you know, he had several different jobs
2 that he worked at. I know that he did -- the other thing is
3 when he -- when he did move out, he moved into a duplex that a
4 friend of his had bought and kind of traded off rent to begin
02:38 5 with helping to remodel the duplex. So whether that was really
6 a job or not, but it was something that he did to kind of
7 support himself.

8 Q. So are you telling us that Ryan, from the time he was ten
9 or so, was working pretty consistently up into and through
02:38 10 college?

11 A. Exactly. In fact, he -- he had the paper route all the way
12 until he was -- I think he graduated from high school. He also
13 worked at a grocery -- a local grocery store as stocker and a
14 bagger. So he was always -- he always had a job doing
02:39 15 something because while I could give my kids the necessities,
16 you know, teenagers, if somebody else has a pair of \$150 shoes,
17 you have to have them too. So that was my rule. It was my
18 rule when it came to driving a car too. You had to be able to
19 pay for driver's ed, and you had to be able to pay for your
02:39 20 insurance because I couldn't afford my insurance and three
21 kids' insurance too, so that was just -- that was just our way
22 of life.

23 Q. And during those years, his teenage years and early 20s,
24 did you get the impression that Ryan enjoyed working?

02:39 25 A. He never complained about it, so I would say he did. When

1 I compare him to, you know, other kids his age and some of his
2 friends, they'd worked for a while, and then they quit, and
3 then they'd go find another job, but, you know, Ryan stayed
4 with his jobs, and, like I said, he didn't complain. If it was
02:40 5 time for him to go to work, he went to work, so, you know,
6 knowing teenagers, if they're not complaining a lot, they're
7 probably pretty happy.

8 Q. And then you said Ryan found his passion in criminal
9 justice during college when he went back the second time?

02:40 10 A. Uh-huh, yes.

11 Q. Is that the degree that he graduated with?

12 A. Yes.

13 Q. And you mentioned he was on the dean's list, you think, for
14 the duration of that?

02:40 15 A. Yes.

16 Q. What did that indicate to you as a mom, the fact that he
17 was back to school and seemingly passionate about his future?

18 A. Well, the first thing that it indicated to me was that, you
19 know, he was maturing because I really, even to this day, I'm
02:40 20 not sure that I think that all 17 or 18-year-olds are ready to
21 plan the rest of their lives, and he graduated from high school
22 at 17, and I definitely think he just didn't know what path he
23 really wanted to follow, and once he decided on what that path
24 was, he worked really hard at it. And the reason I knew that
02:41 25 he was passionate about it was because of the fact that, you

1 know, he moved back home, for one thing. I know that's not
2 real unusual these days, but yet, on the other hand, it's still
3 hard for a guy to move back home and live at home and go to
4 school.

02:41 5 And then, like I said, the fact that he did so well and
6 even would share things that he was learning in school that we
7 could talk about at the dinner table or that -- and prior to
8 that, the first time he was in school, I don't really know for
9 sure if he went to school every day because he really didn't
02:41 10 tell me anything. So if you're going to share that with your
11 family, there has to be a little bit of passion behind it.

12 Q. Were you proud?

13 A. Of course.

14 Q. Can you describe for us what your relationship with Ryan
02:41 15 was like during his college years?

16 A. Well, you know, when I got divorced, Ryan was about ten
17 years old, and during those years and his high school years, he
18 kind of took on the father role, even though he was young. He
19 was kind of my protector, he was his brother and his sister's
02:42 20 protector, and we had our moments, as all moms and sons do, but
21 I always felt -- I always respected Ryan, and I always felt
22 that he respected me. We could sit down -- we had the
23 relationship where we could sit down and we could talk for
24 hours or we could sit down and not say anything for hours, and
02:42 25 either one was okay.

1 Q. And at some point, he obviously graduates college. Did he
2 get a job after that?

3 A. He did. He was a parole and probation officer for the
4 state of Wisconsin.

02:42 5 Q. How long did he do that for?

6 A. I think he did that for a year or two.

7 Q. And then at some point, he applied for the border patrol?

8 A. He did. His younger brother joined the Marines when Ryan
9 was not in college. And then I remember when we went -- Adam
02:43 10 graduated from Marine security guard school and became an
11 embassy guard, and we went to his graduation, and I remember
12 Ryan told me at that time that he was a little bit jealous of
13 his brother, and so I think that's one of the things that
14 helped motivate him in trying to look for a career rather than
02:43 15 a job, and then, you know, being a parole and probation officer
16 is a little bit depressing. I know it wasn't what he really
17 wanted to do with his background and his knowledge and his
18 degree, and so he started looking into federal agencies that
19 were hiring, and he applied to a few, and he was accepted by
02:43 20 the border patrol.

21 Q. And that required him coming out to California to attend
22 the academy?

23 A. He actually was in Artesia, New Mexico.

24 Q. Coming out west?

02:44 25 A. Yes.

1 Q. How about that? Do you recall when that was, what year?

2 A. I really don't. I know it was -- it was after my daughter
3 got married and before my youngest son got married. That's all
4 I can tell you.

02:44 5 Q. 2006, does that sound about right?

6 A. Sure. I know he's been in the border patrol for ten years,
7 so it had to have been 2005, 2006.

8 Q. And once he moved out and came out to New Mexico and
9 subsequently California, how often would you guys talk?

02:44 10 A. Well, when he was in the academy, we didn't talk much at
11 all because he was pretty busy. He would call occasionally,
12 but once he moved here to California, we would probably talk at
13 least two, three, four times a month, usually on the weekends.
14 You know, sometimes I would call him or he would call me.

02:44 15 During football season we always had to stay in contact because
16 we're both big Packer fans, so we'd have a lot to talk about.

17 But, you know, we had regular phone conversations. He'd
18 still come home when he would have vacations. He would come
19 home for holidays, and so we would see him, what I would
02:45 20 consider, pretty regularly.

21 Q. And these phone conversations that you'd have, how would
22 you describe Ryan's overall demeanor?

23 A. It was just, you know, again we'd be talking, you know,
24 he'd ask me questions about what was going on at home, and at
02:45 25 that time I still lived in Wauwatosa, and a lot of his friends

1 were still in the area. He had two of his friends move here,
2 so, you know, we talked about what he was doing.

3 Although, I have to tell you, with one son who's a Marine
4 and the other one's who is a border patrol agent, I don't ask a
02:45 5 lot of questions about their work. A lot of people say to me
6 how can you handle having sons in those careers, and I said all
7 I say is how's work going? They tell me fine, and I'll say are
8 they keeping you busy? And they'll say yes, and then I move on
9 because I don't need to know the specifics because then I don't
02:46 10 have to worry about what they're doing.

11 So we really didn't talk about work a lot, but family, my
12 mom was still alive at the time. Ryan was very close to my
13 mom, so we always had a lot to talk about.

14 Q. So he'd share what was going on in his life, and you would
02:46 15 share what was going on in your life?

16 A. Uh-huh.

17 Q. And those happened two or three times a month?

18 A. Oh, at least, yeah.

19 Q. And I think you mentioned Ryan would come home to visit?

02:46 20 A. Uh-huh.

21 Q. What sorts of occasions would bring him home?

22 A. Well, he would come home for holidays. Usually Christmas.
23 He's never been a real big Thanksgiving celebrator, but I think
24 he may have come home once or twice to go deer hunting. He
02:46 25 would come home for friends' weddings or if there was something

1 special, like Summerfest, going on, he might come home for a
2 concert, but it was a regular thing, and sometimes he'd stay
3 with me at my house, sometimes he'd stay with his friend, but I
4 used to always be the one he'd call to take him to the airport,
02:47 5 so I would usually see him even if it was only picking up and
6 dropping off at the airport. Sometimes he'd stay with his
7 brother or sister, but he -- you know, he was around, and we
8 saw him.

9 Q. Can I take a look at Exhibit 37, please. Do you recognize
02:47 10 that guy?

11 A. I do.

12 Q. Do you remember about when this was taken?

13 A. Well, that was taken in my basement because the hat that
14 he's wearing is from the governor's auction from the state
02:47 15 fair, so that had to have been after we moved to Menomonee
16 Falls, and we moved in in 2005, so it would have been somewhere
17 between 2005 and maybe 2008 or '9, something like that.

18 Q. And what do you see when you look at that picture?

19 A. That's my Ryan. That's my Ryan. That's his smile. It's
02:48 20 very possible there's a little wad of chewing tobacco there in
21 his cheek, but that's what -- when I think of Ryan, that's the
22 face I remember.

23 Q. Did he smile a lot? I know you mentioned the word
24 "Chuckles" and all of that. Was he known for that?

02:48 25 A. You know, Ryan has a very wry sense of humor. If you get

1 to know him, he's not -- you know, he's not a bubbly kind of
2 guy, but he has a really good sense of humor, and he'll make
3 some of those side comments, but he was always smiling, and he
4 was always laughing. Sometimes he got real nervous. He would
02:48 5 really giggle a little bit more than when he wasn't nervous,
6 but he was just -- that's where he got his nickname from.

7 Q. Did you ever notice during this time period any issues with
8 Ryan being depressed?

9 A. No.

02:49 10 Q. Did he ever seem anxious to you?

11 A. The only thing he was anxious to do is at the time he was
12 living in a subletted condo here, and he was really anxious to
13 move. That, I remember. But as far as anxiety, no, he didn't
14 have any, and, you know, like I said, he had friends out here,
02:49 15 he made friends within the border patrol, he had some of his
16 high school friend, he went to concerts, he -- no, he didn't
17 have any anxiety.

18 Q. How about anger? Did Ryan ever strike you as an angry guy
19 back then?

02:49 20 A. Not any -- I mean, he'd get angry when the Packers would
21 lose just like the rest of us, but, I mean, everybody gets
22 angry, but what I can -- would I describe him as an angry
23 person, no.

24 Q. And in addition to his visits back to see you in Wisconsin,
02:50 25 would you also come out here and visit Ryan?

1 A. I did. I came out to visit him right after he moved into
2 the subletted condo that he lived in, and he took me to the
3 San Diego Zoo. It's probably not a big deal for all of you
4 here, but I've never see a panda before, and they had the panda
02:50 5 exhibit here. We went up to Julian. We did some wine tasting.
6 We went down to Old Town. So he really showed me San Diego,
7 and it was my first visit here.

8 I came back to visit him -- well, we stayed with him. My
9 daughter and grandson and I stayed with him when my other son
02:50 10 came back from deployment, and then right after, not too long
11 after that, when he bought his house that he lives in right
12 now, my Christmas present that year was a plane ticket out here
13 so I'd have a chance to see his new house.

14 Q. The one that you were talking about where Adam returned
02:51 15 from deployment, and Adam's Ryan's brother about, right?

16 A. Right.

17 Q. Do you recall when that was?

18 A. Well, let's see. I would say that was probably -- it was
19 the spring of, I would say, around 2012 because I came out
02:51 20 again in December when Ryan bought his house, and it was prior
21 to that, so I think it was in the spring, early spring.

22 Q. When you came out for that spring visit, were Ryan's sister
23 and Ryan's brother there with you?

24 A. Well, Adam was with his wife, and we stayed with Ryan
02:51 25 because nobody that comes back from deployment wants their moms

1 staying with them, so we made sure that we stayed with
2 Adam -- Ryan, and it was my daughter, my grandson, and me, and
3 Ryan, and so we spent some time with Adam and his wife, but
4 then we gave them some of their alone time too. So we again
02:51 5 did some sightseeing, especially this was one of Jackson's
6 first visits to San Diego, so he wanted to see a lot of things.
7 Q. And then it sounds like six or eight month later you came
8 back out for Christmas of 2012?
9 A. Uh-huh.
02:52 10 Q. Yes?
11 A. Yes. I'm sorry, yes, I did.
12 Q. Sorry. This was to celebrate Ryan purchasing his first
13 house?
14 A. Well, it was really my Christmas present, but it was to see
02:52 15 his new house because he was real proud of it and wanted to
16 show it off, and he had just moved in, so he was in need of
17 some furniture, so I think it's always nice to have somebody to
18 go furniture shopping with you, and he'd never really made big
19 purchases like this before, so -- and he wanted to show it off
02:52 20 to me too, and I was very impressed with it.
21 Q. Did you and Ryan during that visit talk about Ryan's
22 future?
23 A. Well, we did. I know that through the years, we have
24 talked about things that Ryan wanted to do. The fact that Ryan
02:53 25 had a house, you know, he mentioned the fact that he was

1 looking forward to, you know, settling down, having a family
2 some day. My grandson's actually named after him. His name is
3 Jackson Ryan. And Ryan is such a great uncle. He's so good
4 with him, and he's always been really great with kids, and so
02:53 5 through the years, but especially now that Ryan had really had
6 some roots, you know, he was talking about in the future
7 meeting somebody, settling down, having a family.

8 Q. And how did that make you feel as his mom, that he's
9 finally putting down some roots and --

02:53 10 A. That's what -- that's pretty much what every mom wants for
11 her kid. She wants them to be happy, and naturally I'd be
12 happy if, you know, he chose never to have children, but you
13 want them to follow their dreams, and it seemed like he was
14 finally achieving the dreams that he was looking forward to.

02:54 15 Q. And he seemed happy to you during this visit?

16 A. Oh, yeah.

17 Q. Again, any issues that you noticed that gave you any pause
18 for concern?

19 A. No, he had a little trouble picking out the furniture, and
02:54 20 the prices really kind of upset him just a little bit, but, you
21 know, it's the first time he ever had to furnish a house, and
22 but no, he didn't -- he wasn't -- he didn't have any issues.
23 Again, I didn't ask him a whole lot of things about work, but,
24 again, that's just the way I handle that. So we didn't talk
02:54 25 much about it, but he didn't seem to be upset or anything at

1 all.

2 Q. And I assume you go back to Wisconsin after some point
3 following this visit?

4 A. I did. I was there for about five days.

02:54 5 Q. And the phone calls and the touching base continue with the
6 same frequency they did before?

7 A. Oh, sure. And along with just the discussions and things
8 come a lot of questions about being, you know, a first-time
9 homeowner and, you know, what would you do in this situation,
02:55 10 and I always try to be very careful and just offer information
11 when I'm asked, but we talked a lot about things to do around
12 the house, so everything was normal as far as I was concerned.

13 Q. And then about six months following your visit, Ryan is
14 injured?

02:55 15 A. Yes.

16 Q. And how did you find out about that?

17 A. Well, I was in bed because it was midnight Central Standard
18 Time, and the phone rang, and my husband answered the phone and
19 said, "It's for you." So I answered and it, said, "Hello," and
02:55 20 a man asked me if I was Debra Halbman, if I was Ryan Moore's
21 mother, and I said yes, and he said this is -- and I can't even
22 repeat to you what he said because I could not understand his
23 name. I asked him to repeat it twice, and finally he said
24 just, "Call me Roger." And I said, "Okay, Roger, why are you
02:55 25 calling me?" Because why would he call me at midnight, and he

1 said, "well, there's been an accident." And the first thing I
2 thought of is that I thought maybe he'd been shot because just
3 the nature of what he does. And I said, "well, what happened?"
4 And he said, "well, I'm not sure, but he has some facial
02:56 5 lacerations, and we're taking him to the hospital." And I
6 said, "So he has facial lacerations? what happened?" And he
7 said, "well, a tire exploded," and he said, "we've had
8 problems -- we have -- you know, he was filling a tire at the
9 station with a -- an air compressor, and it's been faulty.
02:56 10 We've had problems with this compressor before, and there was
11 an explosion, and he has some facial lacerations."

12 MR. LASKE: Objection, Your Honor. Hearsay. Move to
13 strike.

14 THE COURT: Yeah, sustained. The last portion of the
02:56 15 answer relating to what she was told is stricken. It's
16 hearsay.

17 THE WITNESS: Okay.

18 THE COURT: Next question.

19 BY MR. CHAMBERS:

02:57 20 Q. I think you were continuing to tell me about your
21 conversation about how you learned of Ryan's injuries.

22 A. So anyway, he did tell me he was being taken to the
23 hospital, and he told me it was Scripps Memorial, and so he
24 said, "Doesn't Ryan have a brother who lives here in
02:57 25 California?" I said, "Yes, his brother, Adam, which I'm

1 surprised you didn't call him first because he's closer." And
2 he said, "Well, we tried to, but he didn't answer." So I asked
3 him to keep me informed and let me know once they got to the
4 hospital. And he said he would. But then I called my son,
02:57 5 Adam, because it just didn't seem right that if he just had a
6 few -- and in my mind, a laceration is a slight cut. He didn't
7 say a severe laceration or a gash or he didn't say that, you
8 know, it exploded into his face with such power. So I called
9 my son, Adam, and I said, "I don't know what's going on," but I
02:57 10 told him what they had told me, and he said he'd seen the
11 call -- the number, but he didn't recognize the number, so he
12 said, "You know, mom, I think I'm going to meet him at the
13 hospital." So he drove to San Diego and got there just about
14 the time that the ambulance got there with Ryan. So that's how
02:58 15 I learned about the accident, and Adam was the one that called
16 me an hour later and said, "Mom, you need to get out here."

17 Q. And did you?

18 A. I did. I didn't sleep at all that night. I was on a plane
19 by 10:00 a.m. in the morning, and I was out here by 4:30 in the
02:58 20 afternoon.

21 Q. Where did you go once you came to San Diego?

22 A. Adam picked me up at the airport, and we went right to the
23 hospital, and at that point Ryan was in ICU.

24 Q. Did somebody greet you at the hospital?

02:58 25 A. Well, when we walked into -- you have to walk into a

1 waiting room outside of ICU, and then you have to call on the
2 phone to let them know that you're there to see a certain
3 patient, and then they send somebody to escort you into ICU.
4 And so when we walked into the waiting room, it was full, and
02:59 5 the majority of people in that waiting room were either border
6 patrol agents or task force members because Ryan had been on a
7 task force that prior to this accident, and I'd never met these
8 people before, so eventually they allowed us to go into ICU.
9 So it was my son Adam, myself, and Ryan's best friend, Dave,
02:59 10 who is the one I told you moved out here and was kind of like
11 my third son. The three of us went into the ICU.

12 Q. What did Ryan look like when you first saw him?

13 A. Well, luckily Adam had prepared me with what had been done
14 so far, and Ryan's nurse came to meet me at the door. It was a
03:00 15 male nurse, and he wanted to take me in a room and sit down and
16 talk to me and prepare me, and I said, "You know what? I've
17 taken care of my three kids all their lives. And I've been
18 with these boys when they've had broken bones and anything
19 that's happened to them." I said, "I can handle it. I know
03:00 20 what to expect. Adam filled me in." So we walked right over.

21 Ryan was in a hospital bed, but they had the back up so
22 that he was almost sitting upright. He had a tracheotomy tube
23 in his throat, he had gauze bandages all around his head, had
24 just wrung around his head, he had tubes down his nose, he had
03:00 25 IVs in his arm, his head and his neck were about three times

1 their normal size because due to the swelling, and even though
2 his eyes were open, I'm not -- I wasn't real sure if he was
3 truly with us. They had restraints on his arms because he kept
4 trying to pull the tubes out.

03:01 5 So when I walked in there, he's in there in a hospital gown
6 in a hospital bed almost sitting straight up with restraints on
7 his arms and tubes coming tout of everywhere.

8 Q. Were you able to communicate with Ryan at all?

9 A. I did talk to him and he did open his eyes. He couldn't
03:01 10 speak himself because of the trach. I think he responded to
11 me. I don't know if he really did or if it -- I just wanted
12 him to acknowledge that I was there. I didn't -- I really
13 didn't say too much to him because I just wanted him to know I
14 was there.

03:01 15 Q. And you spent the next roughly two weeks or so basically by
16 his side in ICU, right?

17 A. Well, I was with him when he was in ICU. He was in ICU for
18 about three or four days, and we could only spend little bits
19 of time, so I spent a lot of time in the waiting room, and then
03:02 20 once he got his regular room, then I was there every day from
21 about -- well, it depended. There were a couple of days that
22 Adam -- Adam at the time was the company commander at MCRD here
23 in San Diego, so when he had to stay overnight and couldn't
24 drive me back and forth, a border patrol agent would come and
03:02 25 pick me up. I was staying in Oceanside where Adam lived, and

1 so on those days, I never got to the hospital quite as early,
2 but when I went with Adam, I was there from about 6:30 in the
3 morning until about 10:00, 11:00 at night depending on what was
4 going on with Ryan, if a doctor was coming. Most of the
03:03 5 doctors made their rounds late at night, so I was there
6 sometimes -- I would see all three shifts of nurses that
7 worked.

8 Q. So it sounds like you were relatively involved or fairly
9 involved in his medical care while he was in the hospital?

03:03 10 A. Definitely.

11 Q. Do you have an idea of the sorts of injuries that Ryan
12 sustained as a result of being there with him?

13 A. Well, I'm not a medical professional, but I do remember the
14 conversations I had with the doctors, so I know that when they
03:03 15 initially brought him in, his throat was almost swollen closed,
16 so that's why they did the emergency tracheotomy, and it's my
17 understanding they did it without anesthesia because it was
18 that imminent, that it had to be done. I know that initially
19 they suspected that he had a skull fracture because he was
03:03 20 bleeding from his ear, although I was told later that they
21 qualified that and said it was just a really bad concussion,
22 but the bleeding from the ear was probably because of the
23 broken sinus.

24 I know that he had a major gash all the way down the side
03:04 25 of his face and another one on his chin. I know that he lost a

1 lot of teeth. I know that his salivary ducts were severed,
2 which they were very concerned about because you do have -- you
3 do have more than one salivary duct, but that's really
4 important to hydration and, you know, eating and so forth, and
03:04 5 so they were hoping that once they sutured the gash that they
6 would be able to reattach those, but that never happened. I
7 know his jaw was shattered. I know that, like I said, he had
8 lost all the teeth. I think that was about most of what they
9 had told me. They were concerned that he may have lost hearing
03:05 10 from his ear also because he didn't respond as well from the
11 ear on the side of the big gash, but eventually I think his
12 hearing was okay.

13 Q. Was Ryan able to verbally communicate with you while he was
14 in the hospital?

03:05 15 A. Not at all. Everything -- when he finally was conscious
16 enough that he -- that it -- he seemed to know what was going
17 on, he had to write everything down because he had the trach
18 tube in, and while he was there -- again, I'm not a medical
19 profession, so I can't tell you exactly all the ramifications,
03:05 20 but I had to suction out his trach tube almost every couple
21 hours. Not that the nurses couldn't do it, but it would take
22 so long for us to ring for the nurse and have them come, and
23 he'd be really uncomfortable. The way he wrote it out is he
24 said it kind of felt like when you're -- when you're underwater
03:06 25 and you can't breathe, so I can only imagine what it must have

1 really felt like.

2 Q. And how were those two weeks for you as his mom?

3 A. Well, no mother wants to see her child in that much pain or
4 in that condition. I knew that I had to be -- I had to be
03:06 5 present and that I had to be in control because people were
6 asking me questions and wanting me to make decisions for him.
7 I was so glad that my son, Adam, had been there because Adam
8 really helped support me, but I think I helped support him too.
9 I guess my main focus was trying to make Ryan comfortable and
03:07 10 just hoping that everything would turn out okay. I mean, from
11 day one that I got there, no one told it to me, but I know when
12 Adam met the ambulance, they weren't real sure Ryan was going
13 to make it.

14 Q. And did you leave before or after Ryan was discharged?

03:07 15 A. I left just before. I stayed long enough that he had had
16 the jaw surgery. I would have liked to have stayed longer, but
17 I had only asked off for a week, and now we'd gone into two
18 weeks, and so we decided as a family, I left, my daughter came
19 the day before I left, she stayed for a week, then Ryan's
03:07 20 father and his uncle came out right when he got released from
21 the hospital, and they stayed with him. Well, his father
22 stayed with him at home, and then my cousin came. So as a
23 family we spread out our support of Ryan so that he wasn't
24 alone, that somebody was always with him during those first few
03:08 25 weeks.

1 Q. I want to talk a little bit now about your relationship
2 with Ryan since he sustained these injuries.

3 THE COURT: Maybe this would be a good time to take
4 our afternoon break, Mr. Chambers.

03:08 5 MR. CHAMBERS: It would be a great time, Your Honor.

6 THE COURT: Okay. We'll be in recess until 3:30. Be
7 ready to go at 3:30. We're in recess.

8 (Recess.)

9 THE COURT: Mr. Chambers, you may continue.

03:33 10 MR. CHAMBERS: Thank you, Your Honor.

11 BY MR. CHAMBERS:

12 Q. Mrs. Halbman, right before we broke I wanted to start
13 getting into your relationship with Ryan and perhaps some
14 differences that you've noticed in him since he was injured.

03:34 15 So why don't we pick up with the telephone calls.

16 We'll pick up with the telephone calls. You were
17 talking regularly before the incident happened, did that
18 continue following your return to Wisconsin?

19 A. Well, initially when Ryan got released from the hospital,
03:34 20 it bothered him to talk. And so he asked that our
21 communication be through text. So I understood that, and they
22 were less frequent, but I also knew that, you know, there were
23 times I was sure that he was resting and so I didn't think too
24 much of it.

03:34 25 A couple of times I called, and I have to tell you the

1 first few times we did speak, I had a real -- I had a difficult
2 time understanding him in some cases and I'd have to ask him to
3 repeat himself and he would get a little bit upset. So one day
4 he said, that's why I want you to just text me.

03:35 5 So I wanted to remain in touch with him, so I did it
6 through text, but, you know, sometimes you just want to talk to
7 him and find out how he's doing and you can tell by the sound
8 of somebody's voice how they're doing. So when I did get in
9 touch with him and I did talk with him, it was mostly a
03:35 10 monologue by me, which I can do, but that's not why I called, I
11 called to talk to Ryan and everything was yes and no answers.

12 And there were times that there were these long pauses
13 in our conversations and then we'd just hang up. And so
14 initially I just thought it would take him a time to heal.
03:36 15 When it continued to go on and on and on and I'd get more
16 information from talking to my other son than I would from
17 Ryan, I thought my gosh, have I done something, did I do
18 something to make him mad, and I know that was probably selfish
19 on my part to think that, but as a mom with a child she'd had
03:36 20 such a great relationship with and now it was like he didn't
21 want to talk to me.

22 And so the calls, I mean, for a while there, I was
23 lucky if I talked to him once a month and sometimes it was once
24 every other month. We would still text occasionally. He would
03:36 25 call me when things, like something bad happened, like if he

1 got some bad news about a doctor visit or something like that,
2 then he would call, because he needed somebody to vent to.

3 But other than that, he rarely ever called me.

4 Q. It sounds like a pretty stark contrast between your
03:37 5 relationship with him over the phone before this and after?

6 A. Definitely. Definitely.

7 Q. What do you attribute that to?

8 A. Well, I think part of it was the fact that initially he
9 didn't want to talk and it was difficult for him to talk and I
03:37 10 know he was embarrassed when you had to ask him to repeat
11 things. Talking with my other son, he said he just didn't like
12 people asking him a lot of questions. Well, when you're the
13 mom and you want to call up and find out how your child is
14 doing, you're going to ask some questions, but Ryan just didn't
03:37 15 want to answer questions.

16 And so there was this distance between us, and it hurt
17 me a lot because I -- my kids have always come first. So it
18 was really hard to think that I was losing touch with one of
19 them. But I didn't know why because -- I mean I knew, I knew
03:37 20 some of what was happening because of Adam and, you know, Adam
21 was such a great support to his brother, I'm so thankful that
22 he was here, because at least Ryan reached out to Adam. So I'm
23 really glad he had somebody to reach out to, but it kind of
24 hurt that it wasn't me.

03:38 25 Q. And you've had an opportunity to see and hear about Ryan

1 and Adam interacting since this has happened?

2 A. You know, when my boys were young, I told you before that
3 Ryan kind of took over the father figure in the family and he
4 several times protected his younger brother. In fact, there
03:38 5 was one time they were playing a soccer game together because
6 they were both on the high school varsity team and the goalie
7 had cold-cocked Adam and knocked him out cold and they didn't
8 stop the game. So Ryan went, on his senior year when he was on
9 his way to making the All-State team, and stood over his little
03:38 10 brother and swore at the ref so the ref would give him a red
11 card and that stopped the game and then they sent the ambulance
12 to pick up Adam.

13 So, you know, Ryan was always Adam's protector. He
14 looked out for his little brother, even though I know his
03:39 15 little brother used to drive him crazy, he still was the
16 protector.

17 He protected his sister. When his sister had problems
18 in college, he drove there just to hang out with her for a few
19 hours and it was, you know, an hour and a half, two-hour drive
03:39 20 both, you know, one way.

21 So he was the protector, and now it seems like the
22 past few years those roles have changed and Adam's kind of been
23 the support for Ryan. And like I said, I'm so grateful that he
24 has been. I'm sure there's times that he still kind of drives
03:39 25 Ryan a little nuts, but at least he's got somebody there. But

1 I can only imagine that that has to be kind of difficult too
2 when you've been the big brother and now you're kind of
3 changing roles.

03:40 4 Q. So you've seen kind of a role reversal between Adam and
5 Ryan?

6 A. Definitely.

7 Q. And how about in your interactions with Ryan since this,
8 let's say in the few years, couple years since he was injured,
9 have you noticed any issues with depression?

03:40 10 A. Well, I have to admit that for the -- it was probably the
11 first two years after his accident that there was very little
12 communication between us at all. That has improved a little
13 bit. I didn't talk to him enough to know if there was a lot of
14 depression and, like I said, he would call me when he was very
03:40 15 angry, but I do know now that -- I know he's being treated for
16 depression and I can tell you now that he's been on some
17 medication there's been a big difference in him.

18 There's been, I hope, a difference in our
19 relationship. So now when I look back on that period of time
03:41 20 where we had no communication, I can only imagine that that was
21 part of it, as well as the fact that I know he was -- he just
22 became an angry person.

23 Q. What about sadness or withdrawal, did Ryan seem to be sad
24 or withdrawn from you?

03:41 25 A. You know, he hasn't been home for a holiday since before

1 his accident. And so many of his friends have wanted to see
2 him and he may text a few of his friends, but he really doesn't
3 have the same relationship with them. When he does come home
4 to Wisconsin, he doesn't go visit his friends.

03:41 5 Yeah, I've noticed -- I mean to me he's a sad angry
6 young man and he's kind of, you know, built his own little
7 corner of the world at his home and his work and that's kind of
8 his new normal.

9 Q. And from your standpoint, what's your impression as to why
03:42 10 he doesn't want to see his friends anymore?

11 A. Well, one thing I know is he hates to be asked questions.
12 He said, Mom, I don't want to relive the accident over and over
13 and everybody's going to ask me questions. But I can't help
14 but also think that part of it is just Ryan was always very
03:42 15 concerned about his appearance.

16 I can remember when he lived at home, he'd always come
17 and ask me if I thought he looked okay and what he was wearing
18 and he'd ask his sister if he looked okay, not that he was like
19 a fashion hound or anything, but he cared how he looked. And I
03:42 20 know that has to bother him a little bit because he doesn't
21 look the same as he used to.

22 Q. And what about the smiley, happy-go-lucky Ryan that you
23 described for us a little while ago, the one we see in Exhibit
24 37, do you still see him?

03:42 25 A. No, I miss him.

1 Q. And have you been out to visit Ryan since he got out of the
2 hospital?

3 A. Two years ago I came out for Mother's Day because neither
4 one of my boys have come home for Mother's Day in many years,
03:43 5 so I decided I was going to come and visit them. And I was
6 kind of -- actually when I told them both I was coming I was a
7 little worried that Ryan might not want me to come, but he said
8 it was okay.

9 So I spent the first half of the week with Adam and I
03:43 10 spent the second half of the week with Ryan. And it was a
11 very -- it was a very great visit. I'm so glad I came. I had
12 a great time. I tried not to ask Ryan a lot of questions
13 because I didn't want him to shut me off, but it was nice -- it
14 was really nice to spend time with him.

03:43 15 Q. When you came out to visit with him and spend some time
16 with him, what were your takeaways from that time together?

17 A. I left being kind of sad because -- well, for example, we
18 went out -- we went out to lunch with Ryan's friend Dave and
19 Adam, and we went to one of these places that has micro brews
03:44 20 and all these different lunch specials and everything.

21 We had to stand and wait for quite a long time to get
22 in and, you know, Ryan and Dave -- or Adam and Dave ordered a
23 steak sandwich and pulled pork and I forget what I ordered or
24 what I originally was going to order, and Ryan had to order a
03:44 25 grilled cheese sandwich because at that point he had no teeth

1 in, the implants. And he couldn't eat any of the things that
2 all the other guys were having. And I know it bothered him.

3 He didn't say anything, but you know how you can tell
4 that somebody's kind of embarrassed when they have to do that.

03:44 5 I mean -- so it was a great -- it was a great trip. It was
6 great to come back with him. We didn't talk a whole lot about
7 his accident and his recovery. He told me a little bit about
8 it, but at that time he didn't -- he didn't share as much with
9 me as he has since.

03:45 10 Q. But even though he wasn't as vocal with you, you still came
11 away with this sort of sad feeling?

12 A. Oh, yeah, definitely. Just looking at him, you know, we
13 took his dog for a walk and, again, we talked but it was -- it
14 was different. And I enjoyed -- like I said, I enjoyed the
03:45 15 time with him but yet, yes, I left feeling that that's not my
16 Ryan.

17 Q. So we've talked a little bit about the sadness that you've
18 seen and perhaps some depression that you've seen, some anger
19 that you've seen, what about Ryan's memory, have you noticed
03:45 20 any issues with Ryan's memory since this happened?

21 A. Well, you know, before you asked me about the number of
22 times that I'd come to visit Ryan and that trip that I told you
23 about that my daughter Carrie and my grandson Jackson and I
24 came when Adam came back from deployment. You know, we stayed
03:46 25 with Ryan in his one-bedroom apartment. So it's not like he

1 could forget we were there, but he doesn't remember that visit,
2 and we were with him for five days.

3 My daughter called me up one night and she was -- she
4 was kind of teary-eyed and she said she'd just gotten off the
03:46 5 phone with Ryan. And one of the things that Ryan wanted to do
6 as a young adult as he started to travel a little bit is his
7 goal was to take pictures of all the major baseball and
8 football stadiums. And he was going to make some kind of a
9 collage or scrapbook or something, I'm not sure which, but I
03:46 10 remember he and I were in Baltimore together staying at my
11 cousin's and we went into Baltimore to take a picture of the
12 Ravens stadium. So I knew this was something that he wanted to
13 do and he'd gotten like 20 or 25 different pictures. And so
14 Carrie and her son, Jackson, went to Boston last year and they
03:47 15 went on a tour of the Patriots stadium.

16 And so she took all kinds of pictures and she called
17 him up and she was so excited because she wanted him to know
18 that she had all these pictures of the stadium for him. And he
19 goes, I don't know what you're talking about.

03:47 20 And she said, well, you always wanted to collect
21 pictures of all the stadiums. He said, I don't know what
22 you're talking about. And prior to that, she'd had a
23 conversation with him about some friends that she'd gone to
24 high school with, and Ryan and Carrie were only a year apart in
03:47 25 high school so their friends were the same. And there were

1 some of the names that she was bringing up that he should have
2 known that he didn't remember.

3 And so he said to her, and this is I think what got
4 her so emotional, he says, you know what, Carrie, you're going
03:47 5 to have to be my memory for me. And that's really sad if you
6 can't remember your childhood.

7 Q. Has he expressed that to you that he doesn't remember
8 portions of his childhood?

9 A. Well, there's certain things that I'll bring up and allude
03:48 10 to that he says he doesn't remember. And there's certain
11 important things that I really feel he should remember. I
12 don't try to make a big deal out of it. Initially when he used
13 to start -- when he started telling me he didn't remember
14 things I figured it was just his way of shutting me up.

03:48 15 But I honestly think he doesn't remember some of the
16 things. And he was very, very close to his grandparents and to
17 think that he may not remember some of the times that he spent
18 with them, again, I -- I just feel that's so sad.

19 Q. And how about -- as opposed to distant memories, more
03:48 20 short-term memories, have you noticed him doing anything
21 differently to try and remember things close in time?

22 A. Well, he's very good at compensating, because even when I
23 was -- even initially when he got out of the hospital, he's
24 always -- he started to take copious notes. And the few times
03:49 25 I've seen him since his accident, he's always writing things

1 down. Or the few times that we did talk about doctor visits
2 and I would ask him questions, a couple of times he said, I'm
3 going to have to go check my notes or I'll let you know later
4 because I'll have to check my notes.

03:49 5 And I mean I know he makes -- he writes a lot of
6 notes. He takes more notes than I do and I'm 30 years older
7 than him. I should be the one writing everything down. But
8 that's how he compensates. So that is what gets him through,
9 I'm sure gets him through his professional life as well as his
03:49 10 home life.

11 Q. How would you describe Ryan now?

12 A. Well, Ryan's a wonderful young man, but unfortunately I
13 think he's an angry and sad young man. He has -- he's somebody
14 that hides his feelings. He hides his pain. You know, even
03:50 15 when I was listening to the doctor talk about the surgery he
16 had on the roof of his mouth, I knew he had that surgery and I
17 thought to myself, oh my God, that must have just been horribly
18 painful.

19 And when I asked him, he said oh, it wasn't the worst,
03:50 20 but I heard what the doctor said and that had to have been
21 painful. And so he's somebody that can hide that, and he's
22 hidden it from me. He's even hidden some of his surgeries from
23 me that I didn't even know he had.

24 Q. Do you think you're ever going to get the Ryan that you
03:50 25 knew before this happened back?

1 A. I think that Ryan is going to have to create a new normal
2 for himself and so, no, I don't think I'm ever going to get the
3 old Ryan back. I'm hopeful that the new normal that he's going
4 to create for himself is going to be something that -- a life
03:51 5 that he can be happy in.

6 MR. CHAMBERS: Your Honor, I'd like to offer Exhibit
7 36 which is the photo we've been looking at -- excuse me, 37
8 into evidence.

9 THE COURT: Any objection to the photo?

03:51 10 MR. LASKE: No, Your Honor.

11 THE COURT: It's received.

12 (Plaintiff's Exhibit 37 was received in evidence.)

13 MR. CHAMBERS: I don't have any further questions.
14 Thank you, Mrs. Halbman.

03:51 15 THE COURT: Cross-examination?

16 MR. LASKE: No cross-examination, Your Honor.

17 THE COURT: Thank you. You may stand down. Next
18 witness.

19 MR. CHAMBERS: Your Honor, I'd like to call Ryan
03:51 20 Moore. Could we have just a few minutes to collect himself, a
21 minute. Are you good?

22 THE WITNESS: I'm good.

23 MR. CHAMBERS: All right. Never mind.

24 RYAN MOORE, PLAINTIFF'S WITNESS, SWORN

03:52 25 THE COURTROOM DEPUTY: Please state and spell your

1 first and last name for the record.

2 THE WITNESS: Ryan, R-Y-A-N, Moore, M-O-O-R-E.

3 DIRECT EXAMINATION

4 BY MR. CHAMBERS:

03:52 5 Q. Hi. You get the enormous task of following up after your
6 mom --

7 A. Yeah.

8 Q. -- so good luck with that. I want to talk a little bit
9 about your background. I know we just heard from your mom from
03:52 10 her standpoint, but I'm interested to get your perspective on
11 sort of your formative years. So why don't you tell us a
12 little bit about where you grew up and what it was like.

13 A. I grew up in a suburb of Milwaukee, Wauwatosa, actually
14 born in Milwaukee and then moved to Wauwatosa. Went to
03:52 15 elementary, middle and high school in Wauwatosa. I was very
16 involved in sports growing up.

17 Q. What kind of sports did you play?

18 A. Baseball, soccer, football, and basketball for a while.

19 Q. Any favorites?

03:53 20 A. Baseball most likely, actually I was pretty decent at it.

21 Q. What was it about baseball that drew you to it?

22 A. I was a pitcher, so I enjoyed being in kind of command of
23 the game. I didn't have to rely on anybody else for part of
24 the game, but I was actually scouted by the Philadelphia
03:53 25 Phillies and Milwaukee Brewers when I was a sophomore in high

1 school.

2 Q. Wow, must have been pretty decent then.

3 A. Till I blew my arm out my junior year, so.

4 Q. You have a sister, brother?

03:54 5 A. Yes.

6 Q. We've heard a little bit about them. Tell us about your
7 relationship with each of them.

8 A. Growing up, it was good. My sister was a very good
9 student, and my brother and I kind of took the sport route more
03:54 10 than concentrating on school per se, hundred percent, so -- but
11 always close. It was the three of us and my mother most of the
12 time, so we were all pretty tight-knit.

13 Q. Did you guys do a lot of things, you and your siblings
14 together, growing up?

03:54 15 A. Yeah, family trips, and then my brother and I would go to
16 each other's athletic competitions and -- but we took a lot of
17 family trips.

18 Q. Where did you go on your family trips?

19 A. Well, my mom would make us read 10 books a year in order to
03:54 20 get to go to Great America every summer, and I may have missed
21 one or two but that was one that we always usually went on.

22 And then camping and fishing and going to ball games
23 and things like that.

24 Q. Pretty active as a young man it sounds like?

03:55 25 A. Yeah.

1 Q. And then in high school we heard from your mom who talked
2 about, you know, you had a lot of friends, is that your memory
3 of it too?

4 A. Yeah.

03:55 5 Q. Did you like to be social?

6 A. Yeah. I think she'd kind of really go to the extent of
7 when I used to come home all the time I'd spend more time with
8 my friends than my family, which probably isn't good, but I
9 had -- I still have a lot of friends back home.

03:55 10 Q. And when you were back in high school, would you go to
11 their house, they'd come to your house, what was the
12 arrangement typically?

13 A. Yeah, I mean both. A couple of us would walk to school
14 until we got cars. And then every weekend, I was either

03:56 15 involved in sporting events or we went to sporting events or
16 just hung out.

17 Q. And how would you describe your childhood years?

18 A. They were good.

19 Q. Happy?

03:56 20 A. Yeah.

21 Q. Do you look back on them with fond memories?

22 A. Yeah.

23 Q. And then at some point you apply for and start college?

24 A. Correct.

03:56 25 Q. When was that?

1 A. It was 1995.

2 Q. Okay.

3 A. In the fall.

4 Q. And you were living at home at this point in time?

03:56 5 A. Yes.

6 Q. And so you start college at what school?

7 A. University of Wisconsin - Milwaukee.

8 Q. And did you have a major declared at that point?

9 A. Yeah, actually it was criminal justice first.

03:56 10 Q. Okay. What was it about criminal justice that drew you to
11 it?

12 A. I just always have been a fan of police officers and
13 investigations and trying to help people who can't help
14 themselves the most, and it just really interests me, and the
03:57 15 camaraderie as well coming from a big sports background.

16 Q. And so you start at the University of Wisconsin and you go
17 until when?

18 A. I went for three years, but in that three years I changed
19 my major to education after -- after a year or a
03:57 20 year-and-a-half.

21 Q. And we heard from your mom, you're relatively young at this
22 point?

23 A. Yeah, I was only like 19 or I started when I was -- no, I
24 was 18, yeah.

03:57 25 Q. So you start when you're 18, you go to college for three

1 years?

2 A. Yeah.

3 Q. And then what happens?

03:57 4 A. Since I was -- I was paying for it all by myself and I just
5 kind of lost interest and I stopped going and, in return, I
6 started wasting my own money. And I decided to take a break
7 and get a full-time job and see how that lifestyle was like.

8 Q. When you say take a break, what was it that you were taking
9 a break from?

03:58 10 A. School.

11 Q. What, were you not enjoying yourself or?

12 A. I just wasn't focused enough to accomplish what I was there
13 for.

03:58 14 Q. And what do you attribute that to, your lack of focus back
15 then?

16 A. Being young and not -- majority of my friends really
17 weren't going to college and, like I said, I switched majors
18 twice and I wasn't sure which one to do and it was just I
19 needed a break.

03:58 20 Q. Okay. And so you take a break and you start working, you
21 said?

22 A. Yes.

23 Q. What sorts of jobs were you holding down?

03:59 24 A. I was bartending and then I became a bar manager. Well,
25 let me step back, before then in high school I worked hauling

1 kegs of beer around for this music festival, Summerfest, and
2 that was all summer long. And I continued to do that for -- I
3 think I worked there for almost 10 years, like just in the
4 summers, but then I also became a bar manager for a very
03:59 5 successful bar and I would actually take my own leave from that
6 job to go work at Summerfest. And then I also got into
7 painting and rehabbing houses, so semi construction work.

8 Q. But your work life started much earlier than that?

9 A. Yes.

03:59 10 Q. 10 or 11, right?

11 A. Yes.

12 Q. And you were delivering papers back then?

13 A. Yes.

14 Q. And have you been working since then?

03:59 15 A. Yes, I went from the papers to working at the grocery store
16 for a couple years and then -- then I started working the
17 summers down at Summerfest.

18 Q. Why? I mean that seems awful young to start work. What
19 was it about work that you enjoyed?

04:00 20 A. It was just the way we were raised. And like my mom was
21 saying earlier that if we wanted something like I would want
22 special shoes or a special glove for baseball and stuff, she
23 wasn't going to buy it, so I had to work in order to get those
24 things if I wanted them, and just the -- instilled the hard
04:00 25 work ethic in us. Pretty much single mother raising three

1 kids, working three jobs, so just hard work.

2 Q. Was she sort of a role model for you in terms of hard work?

3 A. Oh, absolutely.

4 Q. And when you were working, was it something where you were

04:00 5 driven to be the best at what you were doing or were you just

6 happy to be getting a paycheck?

7 A. No. Anything I do I'm pretty competitive and want to be

8 the best. Even the bar I worked at, my friend's brother owned

9 it and his two other brothers also worked there yet he promoted

04:01 10 me before them and they'd actually worked there longer. So

11 anything I ever did, even painting and construction, you know,

12 I would try to learn as much as I can to try to be the best

13 that I could.

14 Q. That's true in work and in sports it sounds like too?

04:01 15 A. Oh, absolutely.

16 Q. When you were working throughout your teenage years and

17 into your 20s when you took your leave of absence from college,

18 did you have any limitations in terms of what you were able to

19 do physically?

04:01 20 A. No.

21 Q. Any limitations in terms of mental limitations?

22 A. No.

23 Q. Any memory issues that you recall from back then?

24 A. No.

04:01 25 Q. Didn't keep any calendars or to-do lists extensively when

1 you were in your early 20s?

2 A. No.

3 Q. And was your memory something that you used quite
4 frequently back then?

04:02 5 A. Yes.

6 Q. That's true both in school and in work?

7 A. Yes.

8 Q. And at some point you go back to school, right?

9 A. Yes.

04:02 10 Q. What prompted that?

11 A. I guess you can say I matured and after kind of working
12 these other jobs and looking at the big picture at things that
13 I was finally ready and knew what I wanted to do and I went all
14 in for it.

04:02 15 Q. So when you say you were mature and ready and knew what you
16 wanted to do, what was that?

17 A. What did I want to do?

18 Q. Uh-huh.

19 A. Well, I wanted to go back in the criminal justice and
04:02 20 finish my degree so I could move into the law enforcement
21 field.

22 Q. And you'd switched your major from criminal justice to
23 education before you left, right?

24 A. Correct.

04:02 25 Q. So why the switch back to criminal justice?

1 A. Just after years off -- I mean I was off five years, so I
2 had a lot of time to think and talk to a lot of people and
3 educate myself more and I knew that was where I wanted to go.

04:03 4 Q. So you go back to school after a five-year layoff, how was
5 life at college when you go back?

6 A. It's all business, no -- no fun. I took the maximum amount
7 of credits we could take a semester just to try to get it done
8 as quick as possible.

9 Q. And how were your grades?

04:03 10 A. They were good.

11 Q. How was your social life during that time?

12 A. I mean, I still had a social life yet I didn't allow my
13 social life to interrupt what I was trying to do at school. So
14 I could balance the two pretty good.

04:03 15 Q. And that's that maturity that you talked about before?

16 A. Yeah.

17 Q. And you continued to work during this second go at college?

18 A. Yes.

19 Q. And you supported yourself through college; is that right?

04:03 20 A. Yes.

21 Q. And was that doing the painting and the bars still?

22 A. It was more the painting when I went back. Painting and
23 construction.

04:04 24 Q. And I understand that you were a fairly successful student
25 when you went back in terms of your grade point average?

1 A. Yes, I mean I finally applied myself fully and took the
2 responsibility.

3 Q. And were you on a dean's list or get any other academic
4 accolades?

04:04 5 A. I was on the dean's list.

6 Q. And did you graduate with any kind of honors or anything?

7 A. Not that I'm aware of.

8 Q. Maybe they're just holding it back from you. So you
9 graduate in what year?

04:04 10 A. I was summer of 2004.

11 Q. Okay. And your degree is in what?

12 A. It's in -- Bachelor's of Science in criminal justice.

13 Q. And then what did you do at that point?

14 A. Well, before then I was already starting to apply to a
04:04 15 bunch of law enforcement agencies, and the first one that
16 picked me up was the probation/parole for the State of
17 Wisconsin.

18 Q. And what were you doing for them?

19 A. I was a probation and parole agent for the mental health
04:05 20 unit in downtown Milwaukee.

21 Q. And what did that job entail? Give us a little flavor.

22 A. A lot of things. Meeting with the criminal offenders. If
23 they were on probation, you'd meet them at your office first
24 and then you'd do home visits with them. With the guys on
04:05 25 parole, I'd have to go meet them in prison before they were

1 released and then do the same once they got out.

2 But the challenging part was the mental health unit is
3 the hardest unit to work on and making sure they're taking
4 their medications and doing what they're supposed to be doing,
04:05 5 it was pretty challenging.

6 Q. So were you looking elsewhere at the time that you were
7 working for them?

8 A. No, I started to. I just wanted to get my foot in the door
9 because that's what a lot of other places told me. Like, I had
04:06 10 an interview with the Department of State before I graduated
11 and they just told me I need more experience before being
12 hired. So I started getting the experience and finding out
13 other options to apply for and I wanted to kind of get out of
14 the social aspect of law enforcement -- I mean, that doesn't
04:06 15 sound right.

16 Probation and parole is more like social work, I
17 believe, and my aspirations in law enforcement are different
18 than that.

19 Q. What were your aspirations at that point in your life?

04:06 20 A. I've always wanted to be an investigator. The best tool I
21 feel I have or had in law enforcement was my memory and my mind
22 and to be able to help solve crimes using your brain and things
23 like that. I mean, that just really, that's what I wanted to
24 do.

04:07 25 Q. I'm not familiar with law enforcement, can you tell us what

1 an investigator does or what that is?

2 A. Well, like, you see all these shows on TV, like investigate
3 certain types of crimes that occurred and try to backtrack and
4 see how -- what actually happened and like murders and
04:07 5 situations like that.

6 Q. And did you have any particular law enforcement agency that
7 you saw yourself working for?

8 A. Nothing particular, no.

9 Q. Okay. So did you continue to apply for other positions?

04:07 10 A. While I was probation and parole?

11 Q. Yes.

12 A. Yes.

13 Q. Okay. Where did you apply?

14 A. I applied with the border patrol, the Milwaukee police
04:08 15 department, I think a couple other police departments as well.

16 Q. And were you ultimately hired by any of those people?

17 A. Milwaukee was going to hire me, but it was right at the
18 time the border patrol offered me and I decided to try the
19 border patrol.

04:08 20 Q. So you'd also applied to the border patrol during that
21 time?

22 A. Yes.

23 Q. And what was it about the border patrol that attracted you?

24 A. Honestly, for one, it was getting my foot in the door into
04:08 25 the federal system in order to move on to being an

1 investigator. And also experience working in a new part of the
2 country I've never been and just learning -- learning the job.

3 Q. Did you know when you applied for the border patrol that
4 you could potentially have to move to other parts of the
04:09 5 country?

6 A. Yes.

7 Q. And did you know specifically you would be coming out west?

8 A. Yes.

9 Q. Was that something that was attractive to you?

04:09 10 A. I really didn't think of it like that. It was -- I just
11 thought it was the next step in where I want to go and I was
12 ready to take the risk, so.

13 Q. So you're ultimately successful and you were hired by the
14 border patrol?

04:09 15 A. Am I -- what was that?

16 Q. Your application was accepted and you were ultimately hired
17 by the border patrol, is that right?

18 A. Yes.

19 Q. When was that?

04:09 20 A. I don't know the official dates, but I reported on June
21 26th, 2006.

22 Q. And was that for the academy?

23 A. Yes.

24 Q. And I think your mom mentioned that was in New Mexico?

04:09 25 A. Yes.

1 Q. How long were you in the academy for?

2 A. I think it was 19, 20 weeks.

3 Q. And what sorts of things are you learning as you're going
4 through the border patrol academy?

04:10 5 A. Law, of course, defensive tactics, shooting, arrest
6 procedures, ethics, driving, and physical fitness pretty much.

7 Q. And I imagine spending 20 weeks --

8 A. Oh, and Spanish. I should say that.

9 Q. I'll switch my examination over in Spanish. I imagine
04:10 10 after spending 19 or 20 weeks at the academy you also forged
11 some friendships?

12 A. Yes.

13 Q. Tell me about those.

14 A. My mom kind of touched on it earlier, but I have been lucky
04:10 15 to be able -- any group I get put to work with or do anything
16 with, I'm -- I can adapt to people very well and make friends
17 pretty quick.

18 And just being a fun happy guy and, you know, meeting
19 guys from all over the country that you don't know anything
04:11 20 about and then, you know, working together to go through a
21 difficult academy like that, I mean, it was pretty easy.

22 Q. So you had a lot of camaraderie and sort of a team
23 approach?

24 A. Yeah.

04:11 25 Q. How many people were in your border patrol class?

1 A. Well, we started off with 50.

2 Q. How many graduated?

3 A. 37.

4 Q. Where were you among the 37?

04:11 5 A. I graduated first in our class.

6 Q. Top of the class. And following your graduation from the
7 border patrol academy, where did you go next?

8 A. To the Chula Vista border patrol station.

9 Q. And when you first came on board as a rookie border patrol
04:12 10 agent, any physical or mental limitations?

11 A. No.

12 Q. Any issues with memory that you felt were taking away from
13 your work?

14 A. No.

04:12 15 Q. Let's switch gears a little bit, I want to talk about the
16 Ryan sort of socially and outside of work before this injury
17 happened. Tell us a little bit about some of the things you
18 enjoyed doing.

19 A. Hanging out with my friends all the time, whether it be
04:12 20 golfing, taking trips places, camping, just hanging out trying
21 to meet girls, and experience a new part of the country I'm
22 living in. Very social.

23 Q. And that's true from the time you joined the border patrol
24 up until this happened?

04:12 25 A. Yes.

1 Q. Fair to say you didn't often spend the weekend alone?

2 A. No, not often.

3 Q. And you would be out with your friends you mentioned?

4 A. Yes.

04:13 5 Q. Golfing I think? Yes?

6 A. Golfing, yes.

7 Q. And then did you enjoy outdoor activities, hunting,
8 fishing, things like that?

9 A. Like I mentioned, camping and fishing as well.

04:13 10 Q. And then sporting events too, if you're anything like your
11 mom, I guess you're a Packers fan.

12 A. I am.

13 Q. I don't think you have a choice about that one. And would
14 you go to games? Or tell me a little bit about your love of
04:13 15 sports.

16 A. Yeah. I mean multiple Padre games a year, every time the
17 Brewers would come out on the west coast I'd see them here and
18 in LA. Went and saw the Brewers in Phoenix, in San Francisco.
19 I think that's it, but yeah, multiple sporting events.

04:14 20 MR. CHAMBERS: Can I have Exhibit 48, please.

21 THE WITNESS: I went to the Rose Bowl three times too.

22 BY MR. CHAMBERS:

23 Q. And if you weren't actually out at these venues you'd be
24 home watching or with your friends watching?

04:14 25 A. With my friends, yeah.

1 Q. Why don't we take a look at the screen here, this is
2 Exhibit 48. What are we looking at?

3 A. That is in Mission Beach in 2010 during the Packers playoff
4 and that was against the Atlanta Falcons.

04:14 5 Q. Who won?

6 A. The Packers.

7 Q. Who are we seeing in this photo with you?

8 A. The guy on the left in the 15 jersey, that's my buddy
9 Jeremy who I went to high school with. He was in town
04:14 10 visiting. The guy next to him is my good friend, Erik Freitag,
11 who lives out here. The guy next to him is Kevin Huyler who I
12 grew up with and went to high school with, and he was out
13 visiting.

14 Q. So these are some close friends of yours?

04:15 15 A. Yeah.

16 Q. And was this a pretty typical Sunday afternoon at least
17 during football season?

18 A. Yeah.

19 Q. Get together with your friends and have a good time and
04:15 20 watch the game?

21 A. Yes.

22 Q. Can I see Exhibit 39, please. Who do we have here?

23 A. That's myself, my brother and my nephew.

24 Q. That's you on the left of the photo?

04:15 25 A. Yes.

1 Q. And then who's in the middle?

2 A. That's my nephew, Jackson.

3 Q. Is he the one who's named after you?

4 A. Yes.

04:15 5 Q. And it looks like you guys are at Petco?

6 A. Yes.

7 Q. Was this something that you guys would typically do when
8 Adam and your nephew were in town?

9 A. I mean, I can't say every time or for sure. I just don't
04:15 10 remember, but -- we obviously went to a game it looks like.

11 Q. And you enjoyed going to sporting events with Adam and with
12 your nephew?

13 A. Yeah. I enjoy going with anybody.

14 Q. And then you mentioned before going on some trips, what
04:16 15 sorts of places would you visit?

16 A. Like I said before, Phoenix, I've been out a couple times
17 either for sporting events or concerts. I've been up to
18 Spokane, Washington, San Francisco, northern California,
19 Nevada. And I even -- one Christmas I took a trip by myself
04:16 20 when we had -- during the holidays I had some vacation to use,
21 so I took a trip by myself to the Grand Canyon. And then I
22 went up to Bryce Canyon in Utah and Zion National Park in Utah
23 and then Las Vegas on the way back.

24 Q. And these trips, other than that one you mentioned where
04:17 25 you were just traveling alone, were these with other people?

1 A. Yes, always my -- a buddy or two.

2 Q. So you'd take a few friends and you'd go visit these
3 various cities?

4 A. Yes.

04:17 5 Q. Can I see Exhibit 36, please. That's you in the picture, I
6 assume.

7 A. Yes.

8 Q. When was this taken?

9 A. That's when I took the trip to the Grand Canyon. I think
04:17 10 it was December of 2011.

11 Q. And you were just out hiking alone?

12 A. Yes.

13 Q. You liked to be outdoors and be active and do those sorts
14 of things?

04:17 15 A. Yes.

16 Q. Was that something that you'd do frequently here in town as
17 opposed to traveling?

18 A. I mean, I'd do it both. I'd do it both.

19 Q. Can I see Exhibit 38, please. And where are we here?

04:18 20 A. That is up in Julian.

21 Q. And is that Jackson again?

22 A. That is.

23 Q. What were you guys doing up in Julian?

24 A. Showing him it and we were hiking around a little bit, like
04:18 25 we were at an overlook there.

1 Q. Who else was with you guys, if you remember?

2 A. Oh, I'm guessing my sister was.

3 Q. You don't remember?

4 A. I mean, not specifically, but I would imagine it was her.

04:18 5 Q. And then in addition to taking these trips and spending
6 time with your family, you also enjoyed working?

7 A. Yes.

8 Q. And you talked a little bit before about the camaraderie
9 and the team work that you grew in the academy with, was that
04:18 10 something that carried over when you joined the border patrol
11 full time?

12 A. Yes.

13 Q. What was it specifically that you enjoyed about being a
14 border patrol agent?

04:18 15 A. Protecting the country and working with your brothers and
16 sisters and just feeling like you're doing something worthwhile
17 to help out.

18 Q. Can I have Exhibit 40, please. Who do we have here?

19 A. Those are members of a drug and gang task force I was on
04:19 20 for a little over three years.

21 Q. What are you guys doing here in the photo?

22 A. Trying to look cool, I guess.

23 Q. Do you remember when this was taken?

24 A. Not specifically. I mean, I was on that squad from 2010 to
04:19 25 right before my accident.

1 Q. And you look pretty happy here. Were you enjoying your
2 work?

3 A. I was. I worked on a team -- I was the only federal agent
4 on the team. Everybody else on the team was either police
04:20 5 officers or probation, parole, and district attorney. So I got
6 to experience another aspect of law enforcement I wasn't too
7 familiar with.

8 Q. Now, we've heard a couple times now throughout the course
9 of the trial the different task forces that you've been on as
04:20 10 opposed to other assignments, can you give us the differences,
11 what's a task force versus what a typical border patrol agent
12 would do?

13 A. A task force is when they combined multiple jurisdictions
14 or law enforcement agencies together in order to target
04:20 15 specific crimes.

16 Q. And how were you selected to be part of these task forces?

17 A. You have to submit memos and then do interviews and be
18 selected.

19 Q. So prior to your injury, what was it about a task force
04:20 20 that was attractive to you? What made you want to sign up?

21 A. Try something new and educate myself more, have a new
22 challenge.

23 Q. Was there a point in time prior to your injury where you
24 were actually out, I don't know what you'd call it, on patrol
04:21 25 or out in the field?

1 A. What's that?

2 Q. Was there ever a time prior to your injury where you were
3 on patrol or out in the field?

4 A. Oh yeah, all the time.

04:21 5 Q. Okay. And this is different than the task force?

6 A. Yes.

7 Q. What are the differences between being on patrol -- am I
8 using that term correctly?

9 A. Yes.

04:21 10 Q. Okay. So what's the difference between being on patrol and
11 being part of a task force?

12 A. Well, being on patrol at your station you're pretty much
13 focused on one certain area and depending on where you're
14 stationed you're limited of what you can actually -- what laws

04:21 15 you can actually enforce and what you may run into criminal
16 wise per se. And on a task force you're more, you're more semi
17 like a detective or investigator focused on criminals that are
18 on -- are in gangs or on drugs. And the unit I was on was
19 focused mostly on those people that were on probation or parole
04:22 20 and involved in those two.

21 Q. So it sounds like your time on the task force was a more
22 directed investigation as opposed to just being out looking for
23 bad guys?

24 A. Yes. Yes.

04:22 25 Q. Can I have Exhibit 34, please. Looks like you in the

1 center of the picture there?

2 A. Yes.

3 Q. With the badge around your neck?

4 A. Yes.

04:22 5 Q. When was this taken?

6 A. I guess during that time period, 2010 to 2013, I don't know
7 specifically.

8 Q. And do you recall what you guys were doing in this picture?

9 A. The packages behind us are full of marijuana, so a big
04:23 10 narcotics seizure.

11 Q. So you just made a drug bust?

12 A. Yes.

13 Q. And you were kind of doing the trophy shot in front of the
14 bust?

04:23 15 A. Yes.

16 Q. And these look like some of the same guys that were in the
17 last photo we saw?

18 A. Yes.

19 Q. So these were guys that were on the task force with you?

04:23 20 A. Yes.

21 Q. Friends of yours?

22 A. Yes.

23 Q. Can I have Exhibit 35, please. What are we looking at
24 here?

04:23 25 A. Same situation, just a different seizure.

1 Q. Was that part of the task force that you were involved in's
2 goal was to go out and seize drugs?

3 A. Well, like I said, it was a drug and gang task force, so it
4 was one of our duties.

04:23 5 Q. And, again, we've got sort of the trophy shot here in front
6 of all the drugs that you seized?

7 A. Yes.

8 Q. Do you remember -- strike that.

9 I want to focus in now -- we've talked a little bit
04:24 10 about your background, a little bit about your work history. I
11 want to focus in on the months leading up to your injury. We
12 heard from your mom that you bought a house?

13 A. Yes.

14 Q. Tell me a little bit about that.

04:24 15 A. Oh, I'd lived out here in San Diego in apartments for,
16 shoot, six, seven years and always been a dream of mine to own
17 a home. And at that time the market was down and I felt it was
18 now or never to try to jump on it. So I'd been saving my money
19 for years and, of course, I didn't get like the first two or
04:24 20 three houses I wanted to buy and I had to expand my search a
21 little bit.

22 But I found a very nice house, a little farther out in
23 Ramona, but I decided to jump on it.

24 Q. And what was it about buying your first house that was
04:25 25 particularly important to you?

1 A. I mean, a sense of pride and accomplishment, you know, not
2 many people are able to do that. And I'd been busting my butt
3 ever since I was 10 years old working and that's something I
4 believe you work for is to own your own home and advance your
04:25 5 life from that point.

6 Q. So this was a big sort of life event, a big step in your
7 life?

8 A. Yes.

9 Q. Had you thought about settling down and starting a family?

04:25 10 A. Yes.

11 Q. Tell me a little bit about that.

12 A. Well, as you get older, you know, and you're kind of
13 getting over the chasing around and hanging out at bars and
14 stuff like that too much, you kind of look at the bigger
04:26 15 picture of things in life. You see a bunch of your friends
16 getting married, and that also came into mind when I actually
17 bought this house as well because it's on the same -- off the
18 same street as the middle school and high school up there. And
19 I always had the vision of having kids that they can just walk
04:26 20 to school and have their kids come over and play here and.

21 Q. And was having kids something that you looked forward to?

22 A. Yes.

23 Q. Still something you look forward to?

24 A. I would like it but.

04:26 25 Q. Can I see Exhibit 49, please. Do you remember when this

1 picture was taken?

2 A. I believe it was in that same time period of 2010 to 2013.

3 Q. Do you remember where it was taken?

04:27 4 A. I do not, but a friend who's on the task force took it, so
5 I'm guessing it was by their police department.

6 Q. And you don't remember what you were doing in this picture
7 or where you guys were?

8 A. No.

9 Q. But that's you in it, right?

04:27 10 A. Yes.

11 Q. So fair to say life was sort of looking up in the late
12 2012, early 2013 timeframe?

13 A. Yes.

04:27 14 Q. All right. Well, let's move forward a little bit then.
15 We're obviously here today to talk about some difficult things.
16 So I want to delve in and see what you remember, what you don't
17 remember and get your take on things.

04:27 18 I'd like first to talk about the incident itself, the
19 explosion and your injury. Do you have any memory at all of
20 that evening, June 24th, 2013?

21 A. No. And it bugs me every day.

22 Q. How come?

23 A. I don't think we'd be sitting here right now, for one. And
24 because it's changed my life.

04:29 25 Q. Do you want to take a minute?

1 A. No, I'm okay.

2 Q. Okay. What's the last memory that you have before your
3 injury?

4 A. Going on a trip with my brother.

04:29 5 Q. Where did you guys go?

6 A. We went up to northern California.

7 Q. To do what?

8 A. To get away and experience it up there, do some brewery
9 tours and some camping.

04:30 10 Q. When you say camping, are you talking about with tents or
11 RVs or what?

12 A. No, just tents.

13 Q. Was that something you and your brother did frequently?

14 A. I mean, we did occasionally. It depends, he was gone for
04:30 15 many years and so.

16 Q. And do you recall when that camping trip was, how far
17 before your injury?

18 A. Nah, just what people have told me.

19 Q. If I suggest to you it was a couple of weeks, do you have
04:30 20 any reason to doubt that?

21 A. No.

22 Q. So fair to say you don't have a memory for a couple of week
23 period before your injury?

24 A. Correct.

04:30 25 Q. And that's nothing, you don't remember anything?

1 A. No.

2 Q. And similarly you have no recollection whatsoever of using
3 the compressors or filling a tire that evening, is that right?

4 A. No.

04:30 5 Q. Let's talk a little bit about your experience filling a
6 tire. Had you used this particular inflator before?

7 A. Yes.

8 Q. For what?

9 A. To fill tires.

04:31 10 Q. What kind of tires?

11 A. Before that, just vehicle tires, either government vehicle
12 tires or my personal vehicle tires.

13 Q. So we're talking about passenger vehicles, you know, like
14 I've got on my car and you've got on your car?

04:31 15 A. Yes.

16 Q. Had you ever filled a wheelbarrow tire at this particular
17 location before?

18 A. No.

19 Q. You ever filled any smaller tires, like a bicycle tire
04:31 20 maybe?

21 A. No.

22 Q. Any other small volume tires you filled out there?

23 A. No.

24 Q. And when you filled this on those prior occasions, did you
04:31 25 have any idea what the PSI coming from the compressors was?

1 A. No.

2 Q. Did you ever ask anyone?

3 A. No.

04:32 4 Q. Did you ever receive any training from the border patrol or
5 elsewhere on how to properly inflate a tire?

6 MR. LASKE: Objection, Your Honor.

7 THE COURT: Sustained. Sustained. This falls within
8 the ruling the Court made in limine.

04:32 9 MR. CHAMBERS: I apologize, Your Honor. I thought the
10 Court said we could still elicit testimony from Mr. Moore as to
11 his background and training. It's not for the purpose of
12 showing the border patrol is negligent for not training, it's
13 simply to get at what his background and experience and
14 knowledge is.

04:32 15 THE COURT: All right. I change the ruling then, the
16 objection is overruled. You may answer that for that purpose,
17 Mr. Moore.

18 THE WITNESS: No.

04:32 19 THE COURT: Border patrol ever give you training on
20 how to run this compressor?

21 THE WITNESS: No.

22 BY MR. CHAMBERS:

04:32 23 Q. And the prior times that you filled out there did you
24 notice any warning signs located anywhere around that
25 particular inflator?

1 A. No.

2 Q. And were you aware of any restrictions that were placed on
3 what you could or could not fill using that inflator?

4 A. No.

04:32 5 Q. Were you ever aware of any restrictions on when you could
6 use that inflator?

7 A. No.

8 Q. Day or night, no restriction?

9 A. No.

04:33 10 MR. CHAMBERS: Can I have Exhibit 271, please.

11 BY MR. CHAMBERS:

12 Q. Maybe page two. There we go. Have you ever seen this
13 before?

14 A. No.

04:33 15 Q. Can you read what the warning says on there? I don't need
16 you to read it out loud.

17 A. Oh, yeah.

18 Q. And do you recall reading any warning on your wheelbarrow
19 tire prior to inflating it that evening?

04:33 20 A. No.

21 Q. Do you know whether there was a warning on it prior to
22 inflating it that evening?

23 A. No.

24 Q. And did you have any reservations about filling the
04:34 25 wheelbarrow tire?

1 A. No.

2 Q. Do you consider yourself to be somebody who's trained in
3 filling tires?

4 A. Not professionally trained or I'm not an expert, but I've
04:34 5 filled up numerous tires my entire life and I've never had one
6 issue.

7 Q. So you've got some life experience to draw from?

8 A. Yes.

9 Q. And the life experience that you're drawing from is
04:34 10 primarily with what sorts of tires?

11 A. All different types, vehicle, bicycle, the wheelbarrow
12 tire, ATV tires, all different sorts.

13 Q. And never had any issues filling up any of those?

14 A. Never.

04:34 15 Q. Can you estimate for us how many tires in your lifetime you
16 think you filled up?

17 A. At least over 50.

18 Q. And, in fact, you'd filled up this wheelbarrow tire one
19 time before, right?

04:35 20 A. Yes.

21 Q. And where was that?

22 A. It was at the 7-Eleven in Ramona.

23 Q. And when you filled it up at the 7-Eleven in Ramona, any
24 issues with that?

04:35 25 A. None.

1 Q. Any issues with overinflating it or anything like that?

2 A. No.

3 Q. Did you have to read any manuals to tell you how to do it?

4 A. No.

04:35 5 Q. Did you feel competent filling up the wheelbarrow tire out
6 there?

7 A. Yes.

8 Q. There's been some suggestion made, so I think I'll just ask
9 you, why didn't you just take this wheelbarrow tire back to the
04:35 10 7-Eleven instead of taking it to the border patrol facility?

11 A. I can't say for sure, but I guess I just threw it in my
12 truck to fill it up whenever I was near the next air
13 compressor.

14 MR. LASKE: Objection, move to strike, Your Honor.
04:36 15 Calls for speculation or is speculative.

16 THE COURT: Yeah, sustained. The answer was
17 speculative. Sustained. Last answer is stricken.

18 BY MR. CHAMBERS:

19 Q. Do you have any memory as to why you took this wheelbarrow
04:36 20 tire to the border patrol facility as opposed to some other
21 place?

22 A. No.

23 Q. Do you recall when you put the wheelbarrow into your truck
24 to take?

04:36 25 A. No.

1 Q. No idea whether it was a day before or a week before?

2 A. No idea.

3 Q. And do you remember the condition of the wheelbarrow tire
4 in terms of how much air was in it?

04:36 5 A. No.

6 Q. Don't remember if it was flat or not flat or some air or
7 how much air?

8 A. No.

9 Q. What's your first memory following your injury?

04:36 10 A. Waking up in the hospital.

11 Q. And do you recall approximately when that was?

12 A. Shortly before I was released to go home.

13 Q. So you were in the hospital for a couple of weeks, as I
14 understand it?

04:37 15 A. Yes.

16 Q. So it would have been a couple of weeks after the incident
17 when you have your first memory?

18 A. I think I was in the hospital for two and a half weeks, so
19 I think right around the end of the second week.

04:37 20 Q. So is it fair to say there's about a month gap in terms of
21 your memory around the time of this incident?

22 A. Yes.

23 Q. And when you first woke up in the hospital, how did you
24 feel?

04:37 25 A. Confused. In pain. Shocked.

1 Q. Were you scared?

2 A. I would have to say yes. I mean, I had no idea what was
3 going on or why all these people were there and I couldn't talk
4 or -- I was very confused.

04:38 5 Q. And the pain that you were experiencing, what was that
6 from?

7 A. From my whole mouth region and the tracheometry [as spoken]
8 in my throat.

9 Q. Can I have Exhibit 41, please. And is this a picture taken
04:38 10 of you in the hospital?

11 A. Yes.

12 Q. Is that a fair and accurate representation of what you
13 looked like back then?

14 A. Yes.

04:38 15 Q. Can I see Exhibit 42, please. Looks like you from another
16 angle?

17 A. Yes.

18 Q. And is that a fair and accurate representation?

19 A. Yes.

04:39 20 Q. Can I see Exhibit 43, please. Flip that. And same
21 question, is this a fair and accurate representation of you in
22 the hospital?

23 A. Yes.

24 Q. Do you know what injuries you sustained?

04:39 25 MR. LASKE: Objection, Your Honor, calls for hearsay.

1 THE COURT: If you know from personal knowledge what
2 injuries, you may answer.

3 MR. LASKE: And to the extent it might call for a
4 medical opinion.

04:40 5 THE COURT: You may answer. Just based on your
6 personal knowledge of what injuries you had when you woke up.

7 THE WITNESS: Okay.

8 THE COURT: Why don't you take that picture down now.

9 MR. CHAMBERS: Yeah.

04:40 10 THE WITNESS: I know I had a broken sinus, broken
11 nose, tore my parotid gland. I suffered a skull fracture to my
12 upper mandible. I suffered a skull fracture to my bottom
13 ridge, underneath my lip, above my chin, broken jaw, bunch of
14 teeth missing, a huge scar on the side of my face underneath my
04:41 15 chin and on the right side of my face.

16 I know I tore -- I don't know the name of it but one
17 of the muscles above my jaw that helps you eat. Another one I
18 tore that helps you smile. Nerve damage. And there was
19 probably another parotid duct or something, and I know I came
04:41 20 two centimeters away from severing my carotid artery.

21 Q. And you mentioned you were in the hospital for two and a
22 half weeks?

23 A. Yes. They originally told me it was going to be four
24 months -- or not four months, a month, but I was able to get
04:41 25 out in two and a half weeks.

1 Q. And during those first couple of weeks, how were you
2 feeling?

3 A. Pretty much the same as when I woke up, just still stunned,
4 confused, in pain, embarrassed, trying to figure out what
04:42 5 happened, what's going on, not knowing what I'm going
6 to -- what truly -- what true damage I suffered and the road
7 ahead.

8 Q. Were you able to communicate initially?

9 A. When I woke up?

04:42 10 Q. Yes.

11 A. No.

12 Q. Why not?

13 A. Because I had the tracheometry in my throat.

14 Q. How about as the days moved forward, were you able to start
04:42 15 communicating and talking?

16 A. Well, not until they took it out.

17 Q. Once the tracheotomy was removed, were you able to
18 communicate?

19 A. I mean I could speak, but I wouldn't say I could
04:42 20 communicate because it hurt too much to talk and I was missing
21 so many teeth and my jaw was messed up.

22 Q. How would you communicate with others around you?

23 A. I mean, mostly writing stuff down or on the phone just
24 texting. I mean, it hurt too much to talk and no one could
04:43 25 understand me anyway, so.

1 Q. So you were released and you went where after you were
2 released from the hospital?

3 A. To my house.

4 Q. And was somebody there with you?

04:43 5 A. At first it was my brother, my dad, and my uncle.

6 Q. And how were you feeling once you got home?

7 A. Glad to be out of the hospital, but I was useless. I
8 couldn't eat. Couldn't do anything. Just, I was in pain all
9 day. Couldn't sleep. I was worthless.

04:44 10 Q. And that's how you felt?

11 A. Yep.

12 Q. You were eating, how were you eating or sustaining
13 yourself?

14 A. I couldn't eat. Only thing I could do is drink. I don't
04:44 15 even remember how -- I know I don't even think I could use a
16 straw so -- so I know, the only thing I could have is liquid.

17 Q. Can I have Exhibit 44, please. I forgot this one. This is
18 you still in the hospital?

19 A. Yes.

04:44 20 Q. And this is after you've awoken?

21 A. Yes.

22 Q. And this is a fair and accurate depiction of what you
23 looked like?

24 A. Yes.

04:44 25 Q. Is that the swelling we see along the left side of your

1 face there?

2 A. Yes.

3 Q. Can I see Exhibit 17, please. And this looks like you a
4 little further along in your recovery. What are those things
04:45 5 on your face?

6 A. I don't know what you'd call them, bandages or something
7 after one of my surgeries.

8 Q. And is this a fair and accurate representation of what you
9 looked like?

04:45 10 A. When?

11 Q. When this picture was taken.

12 MR. LASKE: Objection, vague as to time.

13 BY MR. CHAMBERS:

14 Q. Do you recall when this photo was taken?

04:45 15 A. It was after one of my surgeries, but it wasn't one of
16 the -- after I got home right away.

17 Q. Right. No, I can tell you're a little further along in the
18 road to recovery.

19 A. Yes.

04:45 20 Q. Do you recall what surgery it followed?

21 A. Not off the top of my head.

22 Q. But that's a photo of you, is it not?

23 A. Yes.

24 Q. Can I see Exhibit 18. And when was this taken?

04:46 25 A. That was after another surgery. I believe it was the

1 second one I had with Dr. Berger.

2 Q. And that's a fair and accurate representation of what you
3 looked like following that procedure?

4 A. Yes.

04:46 5 Q. Can I have Exhibit 20, please. This looks similar to
6 number 17, looks like maybe a larger bandage along the left
7 side of your face there?

8 A. Yes.

9 Q. And this is a fair and accurate representation of you?

04:46 10 A. Yes.

11 Q. And do you recall when this was taken?

12 A. Yeah, after one of the surgeries.

13 Q. Do you recall what surgery?

14 A. Not specific, no.

04:46 15 Q. Were you taking this photo?

16 A. I could have been.

17 Q. Don't remember one way or the other?

18 A. No.

19 Q. So let's go back to you getting home and starting the
04:47 20 recovery process. You said you felt worthless, how was your
21 pain during those first few weeks at home?

22 A. Horrible. Like I said, it was all day long and that's why
23 I didn't even want to talk or anything because the more I would
24 try to talk the more it would hurt.

04:47 25 I would just take as much medication as I could to try

1 to get me as comfortable as possible and just lay there.

2 Q. And then shortly after you were released from the hospital,
3 you had a surgery; is that right?

4 A. Yes.

04:47 5 Q. So the incident happened in June of 2013 and I think you
6 were released and then you went back in, in July of 2013, does
7 that sound right?

8 A. Yes.

9 Q. Late July?

04:47 10 A. I believe it was later July.

11 Q. And do you recall what that surgery entailed?

12 A. That was back at Scripps Mercy and it was by Dr. Vecchione
13 and Dr. Azer, they were removing the stints that they put in my
14 parotid duct or gland and removing some arch bars that they had
04:48 15 put in earlier.

16 Q. Okay. And what was the recovery like from that procedure?

17 A. I mean, pain again and still just not knowing of what's
18 ahead. I mean, I didn't even know Dr. Berger's name until
19 after that one still, and had no idea what was coming.

04:48 20 Q. And then about a month after that surgery, you have another
21 one at Sharp Memorial, is that right?

22 A. That was the first one I had with Dr. Berger on my
23 birthday.

24 Q. Tell me a little bit about what that procedure involved.

04:49 25 A. He broke -- rebroke my jaw. He took a bone out of my hip

1 to put it, graft it in my mouth. He put a bunch of titanium
2 mesh in my mouth and just started kind of reconfiguring my
3 face, I guess.

04:49 4 Q. And the recovery from that particular surgery was
5 difficult, wasn't it?

6 A. Yes. It was the most painful one I've been through.

7 Q. What about it was painful?

8 A. I didn't really know the extent of what he was going to do,
9 but I felt like someone took a sledge hammer and just cracked
04:49 10 me over the face with it. I mean, my whole entire face was
11 sore. I couldn't touch anything and my whole face got black
12 and blue, my eyes, everything like. It sucked.

13 Q. And, again, about a month after that one you go back in to
14 have some additional teeth pulled; is that right?

04:50 15 A. Yes.

16 Q. And that was with Dr. Berger as well?

17 A. Yes.

18 Q. You've had quite a few surgeries to try and put you back
19 together, haven't you?

04:50 20 A. Yes.

21 Q. Do you have any estimate as to how many?

22 A. I think probably around 10 or so.

23 Q. And you don't even remember the first two that you had when
24 you were in the hospital, do you?

04:50 25 A. No.

1 Q. I want to kind of stick with the physical injuries that
2 you've sustained. What's the last three, almost four years
3 been like for you physically?

04:51 4 A. A lot of ups and downs, but I mean for the most part just
5 horrible.

6 Q. Tell me a little bit more, what's been so horrible about
7 it.

8 A. Well, the pain, of course. I lost 50 pounds because I
9 couldn't eat anything. I had to buy all new clothes. And then
04:51 10 I'd be able to eat again or I got to go from liquid to soft
11 food for a little while, then I'd have another surgery. Then
12 I'm back on the liquid diet and that happened, you know, back
13 and forth for years. And, physically, just being in pain when
14 you just don't -- you don't know when it's going to end.

04:52 15 Q. Has it really ended even though three plus years have
16 passed?

17 A. No.

18 Q. Why not?

19 A. Just all the damage done. It's -- it's not going away.

04:52 20 Q. And we heard from Dr. Kohani you only recently got your
21 teeth; is that right?

22 A. Yes.

23 Q. And so for the better part of the last three, three and a
24 half years, did you have any teeth at all?

04:52 25 A. I had a couple.

1 Q. How about any teeth in the front?

2 A. No.

3 Q. And would you go out in public that way?

4 A. I would have to.

04:53 5 Q. Why?

6 A. There's no other way to go to doctor's visits, go to the
7 store, go to work, do anything.

8 Q. Did you have any kind of temporary thing that you could put
9 in there or retainer of some sort?

04:53 10 A. I did at first, but when Dr. Berger pulled out more teeth
11 the fake teeth wouldn't fit anymore and they wouldn't make me
12 new ones, so I said screw it.

13 Q. You'd rather just not have teeth than have teeth that
14 weren't fitting?

04:53 15 A. Because it would cost me thousands more dollars just for
16 the fake teeth.

17 Q. What about your facial cuts and scarring, how has that been
18 over the last couple years?

19 A. Not good.

04:54 20 Q. Why?

21 A. Because people look at you differently and you get a
22 thousand questions asked, well, what happened to you, and they
23 look at me funny.

24 Q. Does that bother you?

04:54 25 A. Yeah.

1 Q. And then we've heard a little bit about the numbness, can
2 you tell us a little bit about the numbness that you're
3 experiencing?

4 A. It's right in my -- pretty much my bottom lip and below it
04:55 5 into my chin and up to my upper lip like right here. Tingling
6 and numbing all day every day.

7 Q. Has it gotten any better?

8 A. No.

9 Q. And what about pain, are you still in pain?

04:55 10 A. I am, but kind of gotten used to it. But it's there.

11 MR. CHAMBERS: Your Honor, this might be a good place
12 to stop for this afternoon.

13 THE COURT: All right. We'll take our afternoon
14 recess at this time. Agent Moore, you may stand down. We'll
04:55 15 see you tomorrow at 9:00. We'll begin promptly at 9.

16 You can leave your things here. We're going to lock
17 the courtroom up. It'll be reopened at 8:30 tomorrow. But
18 anything you don't need to take with you for tonight you may
19 leave here. Any other things we need to discuss before we
04:56 20 recess?

21 MR. CHAMBERS: Just to make the Court aware, Your
22 Honor, we sort of took Ryan out of order. So we've got some
23 doctors lined up for the morning, so we'll pick up with Ryan's
24 testimony tomorrow afternoon, if that's all right.

04:56 25 THE COURT: Yeah, that's fine. Plaintiffs are at

1 almost five hours. The defendants are at an hour and 10
2 minutes at this point just for your planning purposes.

3 (The proceedings concluded at 4:56 p.m., February 28, 2017.)
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1 COURT REPORTER'S CERTIFICATE

2
3 We, CYNTHIA R. OTT and DANA PEABODY, Official Court
4 Reporters, United States District Court, Southern District of
5 California, do hereby certify that pursuant to 28 U.S.C. §753
6 the foregoing is a true, complete and correct transcript of the
7 stenographically reported proceedings had in connection with
8 the above-entitled matter and that the transcript page format
9 is in conformance with the regulations of the Judicial
10 Conference of the United States.

11 DATED at San Diego, California, February 28, 2017.
12
13

14 /s/ CYNTHIA R. OTT
CYNTHIA R. OTT, RDR, CRR
15

16 /s/ DANA PEABODY
17 DANA PEABODY, RDR, CRR
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